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Practising Attorney:
O R,
Lawyer's Office.

Comprehending
The **Business** of an ATTORNEY
in all its BRANCHES.

Divided into Two VOLUMES, viz.

VOL. I. Contains

- I. The Practice of the Court of King's Bench.
- II. The Practice of the Court of Common Pleas.
- III. The Practice of Courts-Leet, Courts-Baron, &c.

VOL. II. Contains

- IV. The Practice of the High Court of Chancery.
- V. The Practice of Equity in the Exchequer.
- VI. The Practice and Method of Conveyancing, &c.

W H E R E I N

All the Precedents and Forms of Processes and Proceedings are truly and faithfully rendred in the *English* Language, in Pursuance of the late STATUTE.

The Third Edition, carefully corrected and much improv'd; with the Rules and Orders of the several Courts, and the Laws and Statutes under each Head, continued to this Time.

By **W. BOHUN**, of the *Middle Temple*, Esq;

In the SAVOY: Printed by E. and R. NUTT, and R. GOSLING (Assigns of E. Sayer, Esq;) for B. Wettesthorpe and C. Fitch, at the Red-Lion, A. Osborn and C. Longman, at the Ship, both in *Pater-noster-row*; T. Moxall, at Judge Coke's Head, and F. Logan, at the *Middle-Temple-Gate*, both in *Fleet-street*. M DCC XXXII.

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T H E
P R E F A C E

It will be needless here to raise an
Eulogium on the ensuing Collec-
tion, or comment at large on the
Excellency and Universality of its
Rules and Precedents: The Title Page
in general, and the Table of Contents
in particular, will inform the Reader
of both the Matter and Method of the
Work; and the Perusal of the Book it-
self will sufficiently evince its Utility
and Benefit.

Recd. Mar. 1, 1899.

What seems most necessary for the
Reader's Information is, that in this
Third Edition there have been many
Additions, Alterations and Correc-
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THE PREFACE.

Pursuance of the late Statute; and nothing has been omitted that may be of Use, in order to answer the Title it bears.

The abundant Variety herein contained, has necessarily obliged us to extend the Work into Two Volumes; each of which are divided into Three Parts; and the subject Matter of every Part may be seen in the Table of their Contents, whereby the Law-Students and other Readers may readily turn to, and easily find the particular Matters enquired after.

The Reader is likewise to be informed, that in this Third Edition, are added many Laws and Statutes relating to the Office of an Attorney, many Rules and Orders of Practice, many Things under the respective Heads of Declarations, Pleas, Issues and Demurrers, Trials, Records, Writs of Error, &c. Divers Instructions and

The P R E F A C E.

Rules of Law touching Court-Keeping, Courts-Leet, Courts-Baron, &c. with Variety of Precedents of Bills, Answers, Rules, and Orders of Court, both in the Chancery and Exchequer; as also many Forms and Instructions touching Conveyances and Settlements of Estates and Interests.

These Things, on Perusal of the Book, will appear undeniably true; whereby the Reader will be fully convinced that this Treatise is now rendred effectually adequate and correspondent to the Title it bears, viz. The Practising Attorney: Or, Lawyer's Office.

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THE
PRACTISING ATTORNEY:
OR,
LAWYER'S OFFICE.

PART. I.

*The PRACTICE of the COMMON-
LAW-COURTS, with the Forms
of Writs, Entries, Declarations,
Pleadings, &c.*

IN a Treatise of Law, *Method* ought to
be a principal Care of the Compiler,
without which Confusion and Perplexi-
ty are unavoidable: I shall therefore
endeavour a Method that is *New*, and more
easy to the Practisers of the Law, than what
has hitherto appear'd on the Subject I have
chosen: And as it is highly necessary that the
Laws and Statutes relating to the Practice of
our Courts, should be first communicated,
as the great Foundation of Business, before
we proceed to the Business it self; so I shall
begin my Work with a concise Account of the
most material *Statutes* concerning the Practice
of

The Practising Attorney:

of the Law, in the respective Courts of
B. R. and C. B.

Of the LAWS and STATUTES relating to the Practice of an Attorney.

*Actions limit-
ed. By 21
Jac. 1. c. 16.*

ALL Writs of *Formedon* in Descender, Remainder, &c. for any Title or Cause in *Esse*, shall be sued within twenty Years after the Title or Cause shall accrue; otherwise, such Title shall be for ever Barred, and the Party claiming excluded his Entry. Entry on Lands, Tenements, or Hereditaments, must be within 20 Years next after a Right or Title is gain'd: But the Titles of Infants, Feme Coverts, Persons *Non compos mentis*, and of such as are under Imprisonment, or beyond the Seas, are saved; so as they commence their Suits at any Time within 10 Years after their Imperfections remov'd.

All Actions upon the Case, (other than for Slander,) Actions for Accompt, (except such as concern Merchandize,) Actions of Trespass, Debt, Detinue, Trover, and Replevin, shall be Commenced within six Years after the Cause of Action, and not after: All Actions of Trespass and Assault, Battery, Wounding, and Imprisonment, are to be brought within four Years after the Cause of Suit, and not after. And all Actions on the Case for Words, shall be commenc'd within

two Years after the Words spoken, and not after.

But the Right of Action in these Cases is saved to Infants, Feme Coverts, &c. so as they commence their Suits within the Times limited after their Impediments remov'd: And there is a Proviso, that where the Plaintiff's Judgment shall be revers'd by Error; or a Verdict pass for him, and it is given against him in Arrest of Judgment, &c. the Plaintiff his Heirs, Executors, or Administrators, may commence a new Action within a Year after such Judgment reversed, or given against the Plaintiff, &c. *Amendments, vide Tit. Records.*

No Claim of Entry made of any Lands, ^{4 Ann. c. 16.} Tenements, or Hereditaments to be of Force §. 17. to avoid a Fine, with Proclamations in the Court of C. B. or Grand Sessions of Wales, or be a sufficient Entry or Claim within the said Stat. 21 Jac. 1. c. 1. unless an Action thereon be commenced within a Year after, and prosecuted with Effect. And Suits in the Admiralty for Seamen's Wages to be commenced within six Years after the Cause of Action. But the Right of Infants, Feme Coverts, *Non compos*, imprison'd, or beyond Sea saved, if Commenced within six Years after their Incapacities removed. Also Persons against whom such Cause of Action for Seamen's Wages, or of Trespafs, Detinue, Trover, Replevin, Account, Case, or Debt upon any Lending, or Contract, *without Specialty*; Debt for Arrears of Rent, or Assault, Menace, Battery, Wounding, or Imprisonment; after such Persons are returned

The Practising Attorney :

from beyond Sea, Plaintiffs may have their Actions against them, if Commenced within the Times of Limitation *supra*. See the *Statute at Large*.

Arrests.
8 Eliz. c. 2.

If any Attorney, &c. maliciously cause any Person to be Arrested, the Prosecutors shall be imprison'd 6 Months, and be liable to a Forfeiture of 10*l*. and treble Damages, 43 Eliz. c. 5. Sheriffs granting Warrants for Arrests, &c. before the Receipt of the Writs, shall forfeit 10*l*. and treble Damages, and 20*l*. Fine to the King.

13 Car. 2.
c. 2.

No Person Arrested upon any Writ out of B. R. or C. B. upon which he is Bailable by the Statute of 25 H. 6. c. 10. shall be forced to give Security for his Appearance at the Day in such Writ, &c. in any Sum above 40*l*. unless the Cause of the Action he particularly express'd: And where such Cause of Action is not express'd, all Sheriffs and Officers shall let to Bail Persons arrested, upon 40*l*. Security for their Appearance.

22 & 23 Car.
2. c. 2.

Note, *This Act is more fully enforced by Statute 2 Geo. 2. c. 22. which is explained by Stat. 3 Geo. 2. c. 26. and by §. 6. of this last Act, Persons arrested and refusing to go to some House may be carried to Gaol immediately. Vide Inst. Leg. 15, 32.*

No Sheriff, Bailiff, &c. to carry any under Arrest to any Tavern, Ale-House, or other publick Drinking-House, without his Consent; so as to charge him with any Beer, Ale, Wine, &c. but what he shall freely call for: Nor demand or receive more from him for the Arrest or Waiting, than by Law ought to be, until an Appearance procur'd, Bail found, &c. Nor take or exact any more for keeping such Person out of Prison, than what he shall voluntarily give: Nor take any more for Lodging than what is reasonable, or what shall be adjudged so by the next Justice of Peace.

For

Dr, Lawyer's Office.

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For preventing Frivolous and Vexatious Arrests.

None to be held to special Bail on any Process out of a superior Court, where the Cause of Action is not 10 *l.* or upward; nor out of an inferior Court, where not 40 *s.* or upward. That in Actions under 10 *l.* (or 40 *s.*) if the Plaintiff proceeds by Way of Process, he shall not Arrest the Defendant, but serve him personally within the Jurisdiction with a Copy of the Process: And if the Defendant appears not at the Return, or within four Days after, the Plaintiff may on Affidavit made (and filed *gratis* in the proper Court) of such Service, enter a common Appearance, or file Common Bail for the Defendant, and proceed thereon; and where the Cause of Action is 10 *l.* (or 40 *s.*) or upwards, Affidavit is to be made and filed of the Truth thereof before some Judge or Commissioner of the Court whence the Process issued, or the Officer (or his Deputy) who issued it, for which 1 *s.* only besides Stamps shall be paid; and the Sum is to be endors'd on the Process, &c. for which and no more, the Sheriff or Officer shall take Bail. That Judges of inferior Courts may proceed in suits, not exceeding 5 *l.* tho' their be other Actions there entred, wherein the Plaintiff's Demands against the Defendant do exceed 5 *l.* and that Persons convicted of Perjury, Forgery, Subornation or Barratry, practising as Attornies or Solicitors in any Court, the Judges thereof may on Complaint or Information, examine the same in a summary Way

Attorneys.

The Practising Attorney:

in open Court; and if it appears he has so acted, &c. Cause him to be Transported.

29 Car. 2.
c. 7.

No Writ, Process, Warrant, &c. (except in Cases of Treason, Felony, or for Breach of the Peace) shall be serv'd upon a Sunday: If so, to be void, and the Person serving liable to the Suit of the Party griev'd, and answer Damages, as if done without Writ.

Attornies.

4 H. 4. c. 18.

All Attornies are to be examined by the Justices, and by their Discretion put into the Roll. They shall swear to Execute their Offices truly; and where they are Insufficient, they shall be remov'd by the Justices, and their Clients have Notice thereof. If any die, or cease to practise, the Justices are to appoint others: And if an Attorney be found notoriously in the Fault, he shall forswear the Court, and never after be admitted into any other Court.

1 H. 5. c. 4.
1 Vent. 65.

Under-Sheriffs shall not practice as Attornies. So of the Marshal of B. R. and Warden of the Fleet, *ut videtur*.

32 H. 8. c. 30.

Every Attorney shall enter his Warrant of Attorney in every Suit upon Record in Court, on Pain of 10*l.* and Imprisonment. And by 3 Jac. 1. c. 7. an Attorney, Solicitor, &c. shall not be allow'd any Fees laid out for Counsel, or otherwise, unless he have Tickets thereof signed by them that receive such Fees: And he shall give unto his Client true Bills of all the Charges of Suit, under his own Hand, before he can charge his Client with the Payment thereof. And by Stat. 2. Geo. 2. c. 23. He can't commence an Action thereon till a Month after the Bill delivered.
And

Dr, Lawyer's Office.

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And See *Inst. Leg.* 25, 26. the Method of referring and taxing Bills by that Statute. *Vide infra.*

If an Attorney delay his Client's Suit for Gain, or demand by his Bill more than his due Fees and Disbursements, the Client shall recover Costs and treble Damages; and he shall be for ever after disabled from being an Attorney or Solicitor. None are to be admitted Attornies in Courts of Record, but such as have been brought up in the said Courts, or otherwise well Practis'd and Skilful, and of an honest Disposition: And none but such shall be hereafter suffer'd to solicit Causes in any Court.

An Attorney shall not suffer any other not qualified to follow a Suit in his Name, on Pain that each of them shall forfeit 20 *l.* to be divided between the King and the Party griev'd thereby.

By 13 *W.* 3. c. 6. and other late Acts, 13 *W.* 3. &c. Attornies, Solicitors, Counsellors, &c. are to take the Oaths of Allegiance, Supremacy, and Abjuration, or be disabled to Execute their Employments, to prosecute any Suit, be a Guardian, &c. and to forfeit the Sum of 500 *l.*

The Statute 2 *Geo.* 2. c. 22. for regulating Attornies, *Enacts,* *Stat.* 2. *Geo.* 2. c. 23.

(1.) That no Person shall practice as an Attorney, or sue out any Writ or Process, or commence, carry on, or defend any Action, or other Proceeding, before or after Judgment, in the Name of any other, in any Court of Record (*in England*) where Attornies have been customably admitted and sworn, *For Regulating Attornies, &c.*

Attornies to be sworn, &c.

sworn, unless he take Oath *infra*, and be admitted and enrolled before the first of December 1730. in such Court where he shall act as Attorney, or be sworn, admitted, and enrolled in such Court, after the said first of December, in the Manner hereafter directed.

Judges to examine into their Capacity before they act.

(2.) That the Judges of such Court (or one of them) before they admit any to take such Oath, shall examine and inquire by such Ways and Means as they think Proper, touching the Person's Fitness and Capacity to act as an Attorney; and if they are certified that he is duly qualified, then, and not otherwise, they are authorized to administer the said Oath, and may after cause him to be admitted as an Attorney of such Court; and his Name is to be enrolled as an Attorney therein, without Fee or Reward, other than 1 s. for administering the Oath; which Admission shall be written in Parchment in *English*, in a common legible Hand, and signed by such Judge, or Judges (whereon the lawful Stamp shall be first impressed) and then delivered to the Person admitted. See the Stamp Acts, viz. 5 W. M. c. 21. 9 W. 3. c. 25. & 12 Annæ c. 9.

(3. & 4.) The like Clauses (*mutatis mutandis*) for Solicitors in Courts of Equity, &c. as Sect. 1. and Sect. 2. *supra*.

After December 1, 1730. None to act as an Attorney, unless he has served 5 Years, &c.

(5.) After the said first of December 1730. none to act as an Attorney, or sue out any Writ or Process, or commence, carry on, or defend any Action or Proceedings, before or after Judgment, in the Name of any other, in any Court of Law, unless he has been bound by Contract in Writing, to serve as a Clerk for

For 5 Years to an Attorney, duly and legally sworn and admitted *ut supra*, in some or one of the said Courts *supra*, and during the said 5 Years continued in such Service, and afterwards examined, sworn, admitted and enrolled *ut supra*.

(6.) That the Judges of the said Courts, or one of them, before they, &c. as Sect. 2. *supra Verbatim*.

(7. & 8.) The like for *Solicitors*, as (5. and 6.) *supra* are for *Attornies*, *mutat. mutand.*

(9.) Not to exclude such from being examined, sworn, admitted, &c. who before March 25. 1729. were bound only for four Years.

(10.) Attornies and Solicitors so sworn of one Court, with Consent of Attornies or Solicitors sworn of other Courts, may sue out Writs and Process, and prosecute and defend Actions in such other Courts.

(11.) The Judges not to swear, &c. a greater Number of Attornies, than by ancient Usage have been formerly allowed. *Quere.*

(12.) Attorney's Clerks, on Death of their Masters, may be turn'd over to others.

(13.) Attornies, before Admission to take the Oath, viz. *I A. B. do swear, That I will truly and honestly demean myself in the Practice of an Attorney, according to the best of my Knowledge and Ability.*

Oath.

So help me God.

(14.) The like Oath for a Solicitor, before his Admission.

(15.) No Attorney or Solicitor to have more than two Clerks at one Time.

(16.)

The Practising Attorney:

(16.) But Prothonotaries or Secondaries of any the said Courts may have three.

(17.) Sworn Attornies permitting such as are not so to issue Writs, &c. shall be disabled from practising.

(18.) Attornies and Solicitors, to be inrolled in their proper Courts.

(19.) Attornies to be admitted, &c. without Stamps, if sworn before June 1. 1729.

(20.) Sworn Attornies may be admitted Solicitors without Stamps.

(21.) Sworn Solicitors of one Court of Equity, may be so of another.

*Attornies
Names to be
subscrib'd to
Writs and Pro-
cesses.*

(22.) All Writs and Process for arresting the Body, and Writs of Execution, or some Label annext thereto, and every Warrant made thereupon, shall, before the Execution or Service thereof, be subscribed or indorsed with the Attorney, Clerk in Court, or Solicitor's Name (in a common legible Hand) by whom sued out. And if such Attorney, Clerk or Solicitor, be not the Person immediately retained by the Plaintiff in the Action or Suit, then also with the Name of the Attorney or Solicitor, so immediately retained or employed; and that every Copy of any Writ or Process before Service thereof, be in like manner subscribed or indorsed with the Name of the Attorney, &c. immediately employ'd, &c.

*Not to com-
mence Actions,
&c. till a
Month after
Bills delivered.*

(23.) No Attorney or Solicitor of any Court aforesaid, shall commence or maintain any Action or Suit for any Fees, Charges or Disbursements, at Law or in Equity, till one Month after he has delivered to the Party, or left at his Dwelling-House, or last Place of Abode

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Abode, a Bill of such Fees, &c. written in a common legible Hand, and in *English*, (except Law-Terms and Names of Writs) and in Words at Length (except Times and Sums,) and subscribed with his proper Hand; and on Application of the Party charged, or any other thereto authorized, to the Lord Chancellor, or Master of the Rolls, or any of the Courts *supra*, or any Judge or Baron, where the Business in such Bill, or the greatest Part thereof, in Amount and Value was transacted; and on Submission of the said Party, or Person so authorized, to pay the whole Sum that on Taxation of the Bill shall appear due, the said Lord Chancellor, Master of the Rolls, Courts, Judges or Barons, are to refer such Bill, and the Demand thereon (tho' no Action or Suit be then depending in such Court touching the same) to be taxed and settled by the proper Officer of such Court, without any Money brought into Court for that Purpose. And if the Attorney, Solicitor, or Party chargeable, shall, on due Notice, refuse or neglect to attend such Taxation, the Officer may proceed to tax it *ex parte*, (pending which Reference and Taxation, no Action shall be commenced or prosecuted on such Demand) and on Taxation and Settlement of such Bill and Demand, the Party shall forthwith pay to the said Attorney, or Solicitor, or Person authorized to receive it, and present at the Taxation, or such other as the Court shall direct, the whole Sum found due; which shall be a full Discharge of the said Bill and Demand. And in Default thereof, he shall be liable to an Attachment, or

*Judges, &c.
to refer Bills
to be taxed
without Mo-
ney brought
into Court, &c.*

*The Manner
of taxing Bills.*

The Practising Attorney:

Costs of Taxation by whom to be paid.

Attornies, &c. not enrolled suing out Writs, &c. Forfeit 50 l.

or Process of Contempt, or such other Proceedings, at the Election of such Attorney, or Solicitor, as he was before liable to; and if on such Taxation it be found, that the Attorney or Solicitor is over-paid, they shall forthwith refund, and pay to the Party, or some other authorized to receive it, if Present, or else to such other, or in such manner as the Court shall direct, all such Money as the said Officer shall certify to be so over-paid: And in Default, the said Attorney or Solicitor, shall be liable to Attachment, Contempt, or such other Proceedings at the Party's Election, as he was before this Act. And the said Courts are to award Costs of Taxation, *viz.* If the Bill taxed be less by a sixth Part than the Bill delivered, the Attorney, or Solicitor is to pay the said Costs; but if not so, the Court in their Discretion shall charge either the Attorney, or the Client, according to the Reasonableness or Unreasonableness of such Bills.

(24.) After December 1, 1730. If any Person in his own, or another's Name, sues out any Writ, or Process, or commences, prosecutes, or defends, any Action or Suit, or any Proceedings in any of the said Courts, as Attorney or Solicitor, for, or in Expectation of any Fee, Gain, or Reward, without being admitted and enrolled as aforesaid, he shall for every such Offence forfeit and pay 50 l. to the Use of him who shall prosecute, and also be made incapable to maintain or prosecute any Action or Suit in any Court, for any Fee, Reward, or Disbursements, on Account of prosecuting, carrying on, or defending

fending any such Action, Suit or Proceeding.

(25.) Penalties and Forfeitures on this Act, may be recovered by Action of Debt, Bill, Complaint, or Information, in any Court of Record at *Westminster*, Counties Palatine of *Chester*, *Lancaster*, or *Durham*, or Courts of Grand Sessions in *Wales*, for Offences within their respective Jurisdictions, or at the Assizes or General Quarter-Sessions of the County, Riding, or Division where committed, by any Person suing within Twelve Months after, with treble Costs of Suit; no Effoin, Protection, or Wager of Law allow'd, and only one Impar lance: Also no such Bill, Complaint, Suit, or Information, nor any Proceedings thereon, shall be removed before Judgment, or stayed by *Certiorari*, *Habeas Corpus*, or other Writ.

Penalties and Forfeitures recoverable in any Court of Record, &c. or Quarter-Sessions.

(26.) This Act not to extend to the Examination, Swearing, Admission, or Inrollment of the Six Clerks in Chancery, or the sworn Clerks in that Office, or their waiting Clerks, or the Curstors of that Court, or the Clerks of the Petty-bag Office, or Clerks of the King's Coroner, and Attorney in *B. R.* or of the Filazers of that Court, or *C. B.* or of the Attornies of the Dutchy Court, or Court of Exchequer, at *Chester*, or of the Courts of the Lord-Mayor, and Sheriffs of *London* respectively; but that they may be sworn, admitted, and practice in those Courts and Offices, as heretofore.

Not to extend to the Six-Clerks in Chancery, or their Clerks, Curstors, Clerks of the Petty-Bag, Clerks in the Crown Office, &c.

(27.) Also, not to extend to the Examination, &c. of Attornies, or Clerks of the King's Remembrancer, Treasurer's Remembrancer,

Attornies, and Clerks of the Exchequer, Pipe, &c. as heretofore.

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brancer, Pipe, or Office of Pleas in the Exchequer; but that they may be approved, sworn, admitted, and practice in the said Court of Exchequer, or practice in any other Court of Record *supra*, in the Name, and with Consent in Writing signed of some sworn Attorney of such Court, as they might heretofore: And any Person, sworn, admitted and enrolled an Attorney, or Solicitor, in any of the said Courts *supra* (*ut supra*) may practice and solicit in the said Offices, as heretofore.

Nor to Solicitors of the Treasury, Customs, Excise, &c.

(28.) Also not to extend to Solicitors of the Treasury, Customs, Excise, Post-Office, Salt, or Stamp-Duties, or of any Branch of the King's Revenue, nor to the Solicitor of the City of London, or the Assistant to the Council for Affairs of the Admiralty and Navy, but that they may be admitted, &c. and practice as heretofore.

(29.) The Act to continue from June 1, 1729, for nine Years, and to the End of the then next Session. See further of *Attornies*, ante *Arrests*, and infra *Barratry*, *Champerty*, &c.

Champerty, &c.
33 Ed. 1.

Attornies, &c. attainted of Champerty, shall suffer three Years Imprisonment, and be Fined at the King's Will. *Note*; Champertors are such as move Pleas and Suits, or cause them to be moved, and prosecute them at their own Charge, to have Part of the Thing sued for, or Part of the Gains.

28 Ed. 1. c. 11.

None shall take upon him a Cause or Suit, with an Intent to have Part of the Thing sued for; neither shall any upon any such Contract give up his Right to another, on Pain

Pain that the Taker shall forfeit to the King so much of his Lands and Goods as do amount to the Value of the Part so purchased for such Maintenance.

None shall maintain any Quarrels save ^{20 E. 3. c. 4.} their own, on Pain to have their Bodies, Lands, and Goods, at the King's Pleasure.

None shall unlawfully maintain any Suit or ^{32 H. 8. c. 9.} Action, retain any Person for Maintenance, Imbrace Jurors, &c. on Pain of forfeiting for every Offence 10 l. to be divided between the King and Prosecutor.

Barretors are common Wranglers and Pro- ^{Barretry.} moters and Stirrers up of Suits and Quarrels, ^{34 E. 3. c. 1.} to the Disturbance of the Peace, &c. who are punishable for such Offences: But a Man may prosecute an infinite Number of Suits against others, which are his own proper Suits, and not be a Barretor; for if they are false, the Defendants shall have Costs against him and recover their Damages: But if a Man designs not the Recovery of his own Right, but merely to ruin and oppress his Neighbours, it is Barretry.

For Perjury, Forgery, Subornation and Barretry by Attorney. *Vide supra.*

Conspirators are such as bind themselves by ^{Conspiracy.} Oath or other Alliance, falsely and maliciously to Indict, and falsly to move and maintain Pleas, &c. who are to be punished by Imprisonment, Fine, &c. at the Discretion of the Justices. ^{33 Ed. 1. c. 7. H. 5.}

The Chief Justice and other Justices of the ^{Affidavits.} Court of *King's Bench*, or any Two of them, ^{29 Car. 2.} whereof the Chief Justice to be one; and the ^{c. 5.} Chief

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Chief Justice of the *Common Pleas*, and the rest of the Justices there, or Two of them, whereof the Chief Justice to be one; and the Lord-Treasurer, Chancellor, and Barons of the *Exchequer*, or Two of them, &c. may by Commission under the Seals of the respective Courts, empower Persons in the several Counties, to take Affidavits concerning any Thing depending in the said Courts, as Masters of Chancery in extraordinary use to do.

Which Affidavits shall be filed in the several and respective Offices of the said Courts to which they relate; and then be read and used in all the said Courts as other Affidavits are, and to be of the same Effect as Affidavits taken in Court, *viz.* to be read upon Motions, but not upon Trials: And all Persons forswearing themselves in such Affidavits, are to incur the like Penalties as if they had been taken in open Court.

Also any Judge of Assize in his Circuit may take and receive any Affidavit, that any Person shall be willing to make before him, in or concerning any Cause, Matter, or Thing depending, or relating to any Proceedings in the said Courts of *King's Bench*, *Common Pleas*, and *Exchequer*, or any of them.

The Persons taking the Affidavits as above, shall receive only 1 s. for so doing.

Bail.

4th ; W. &
M. c. 4.

The Judges of the *King's Bench*, 'or any two of them, whereof the Chief Justice to be one; the Justices of the *Common Pleas*, or any Two of them; and the Barons of the *Exchequer*, to grant Commissions to Persons to

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to take Bail in the Country, in Causes depending in their several Courts.

In the Taking and Filing whereof, the *Rules of B.R. Court of King's Bench* hath Order'd, that the Bail-piece shall be drawn and engrossed on Parchment, in the Form following: *in taking Bail before Commissioners.*

A. B. Attorn. } Mid. H. Johannes Doe de
pro Def. } Islington in Com' præd' Gen' *See the Form*
traditur in Ball. Super Cepi *in English*
Corp. Johann. Denn de Hack- *hereafter.*
ney in Com' præd' Gen.
Rich. Fenn de Highgate in
Com' præd' Gen. Ad Sectam

Capt. & Cognit. die,
&c. coram A. B. un' Richardi Roe.
Commissionar. &c.

In taking the Recognizance, the Cognitors must undertake, that if the Defendant be condemn'd at the Suit of the Plaintiff, he shall satisfy the Costs and Condemnation, or tender his Body to the Marshal of the Court; or that they will pay the Costs and Condemnation for him. If Bail be given upon any Action remov'd by *Habeas Corpus*, then instead of Writing *Super Cepi Corpus*, say *Super Brev. de Hab. Corp.* And instead of Writing the Plaintiff's Name, write, *ad Sectam Quer. in Querel.* And the Cognitors must undertake as above.

The Affidavits of due taking such Bail, shall be made either before some Judge of B. R. or some other Person who shall have Power to take Affidavits in Causes depending

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in the said Court. All Bails taken by the Commissioners within 40 Miles of *London*, are to be transmitted to one of the Justices of the Court within 8 Days after the Taking: And where the Distance from *London* exceeds 40 Miles, within 15 Days after the Taking thereof: Unless all the Justices shall be in their Circuits; and then, as soon as any one of them shall be returned. The Commissioners shall keep Books for entering the Names of the Defendant and his Bail, &c. as it is in the Bail-piece, and the Time of Taking, &c. And the Plaintiff's Attorney shall be at Liberty to repair to such Books, and enquire into the Sufficiency of the Bail; and if they are found Insufficient, they may except against them within 20 Days after the Bail is transmitted, and Notice to the Plaintiff or his Attorney, of the Taking thereof: And in that Case the Defendant is to put in better Bail, or the Cognizors must justify themselves in open Court, &c.

*Rules of C. B.
in taking Bail
before Commis-
sioners.*

In the *Common Pleas*, before any Bail be taken by Virtue of the said Act, it is Ordered by the Court, that a true Copy of the Writ on Parchment, to which the Defendant is to put in Bail, shall be brought to the Commissioner, and thereupon the Bail-piece shall be drawn and engross'd on the said Parchment Copy, in this or the like Form, viz.

A. B.

A. B. Attorn. } Manuaptores Johannes Denn See the Form
 pro Def. } de, &c. in Com' Ebor' Gen' & in English
 Richardus Fenn de eadem Gen'. hereafter.
 Pars ipsa in 20 l.
 Uterque M. in 10 l.

Capt' & Cognit' die Anno
 Dni', &c. de bene esse coram
 me A. B. un' Commisionar.

If the Defendant be not present, then the Bail are usually bound in double the Sum in the Writ, otherwise only single: And the Condition of the Recognizance is to this Effect, viz. You (the Defendant) do acknowledge to owe unto the Plaintiff 20 l. And you (the Bail) do severally acknowledge to owe unto the same Person, the Sum of 10 l. a-piece, to be levied upon your several Goods and Chattles, &c. upon Condition, that if the Defendant be condemn'd in the said Action, he shall pay the Condemnation, or render himself a Prisoner to the Fleet for the same: And if he fail so to do, (you the Bail) do undertake to do it for him.

The Affidavits of the due taking of the Bail, are to be made before some Judge in C. B. or other Person empower'd to take them, as in B. R. And within 40 Miles of London, the Bails are to be transmitted up to the Justices within 10 Days; and at a farther Distance within 20 Days, &c. Also Books are to be kept by the Commissioners for Enttring the Bails, and the Sufficiency of the Bail may be enquir'd into and excepted
 C 2 against

The Practising Attorney :

against in 20 Days, &c. in like Manner as in the Court of B. R.

*Affidavit of
taking Bail in
B. R.*

In the King's Bench. Between A. B. Plaintiff, and C. D. Defendant, E. F. of, &c. maketh Oath that the Recognizance of Bail or Bail-piece hereunto annex'd, was duly acknowledged by, &c. (the Bail) before G. H. Esq; the Commissioner, who took the same in this Deponent's Presence.

Sworn (such a Day, &c.) before me, E. F.

Of holding to special Bail, and filing common Bail on the Statute 12 Geo. I. cap. 29. *Vide ante.*

*Recognizances
for Debts.*

The Chief Justice of the *King's Bench* and the *Common Pleas*, by 23 H. 8. c. 6. or either of them, or (in their Absence out of the Term) the Mayor of the Staple at *Westminster*, and the Recognizances for the Payment of Debts in this Form following :

Noverint universi per presentes nos A. B. & C. D. teneri & firmiter obligari Johi. Stile, in Cent' libr' Solvend' eidm' Job', aut suo certo Attorn. hoc Script' ostend. Hered. vel Execut' suis in tali fest. &c. proxim' futur' post Dat' present' & si Defecero, vel Defecerimus in solutione Debit' predict. volo & conced. (vel sic volumus & concedimus) quod tunc currat super me Hered. & Executor. meos (vel super nos & quemlibet nostrum Hered. & Execut' nostros) pœna in Statuto Stapul. de Debit. pro Merchandis in ead' emptis Recuperand. Ordinat. & provis. Dat. die & anno, &c.

The same in English:

Know all Men by these Presents, That we A. B. and C. D. are held and firmly bound to J. S. in One hundred Pounds to be paid to the said J. or to his certain Attorney, on shewing this Writing his Heirs or Executors at (such a Feast) next coming after the Date of these Presents; and if we or they shall fail in the Payment of the Debt aforesaid, we Will and Grant that then the Penalty of the Statute Staple shall run upon us, and each (every) of us, our Heirs, Executors and Administrators, to be recovered as a Debt for Merchandizes bought as in (by) the same (Statute) it is ordained and provided, Dated the Day of in the 5th Year of the Reign of our Sovereign Lord K. George the Second, &c.

And so it may be made single, *Mutatis Mutandis*, by inserting *J.* for *we*, *my*, for *our*, &c.

The Obligation is to be sealed with the Seal of the Recognizors, and also with such Seal as the King shall appoint, and with the Seal of one of the Chief Justices, &c. And the Clerk of the Recognizances (appointed by the King) shall write and inroll such Obligations in two several Rolls indented, whereof one shall remain with such of the said Justices, &c. as shall take the Recognizances, and the other with the Writer. The Clerk or his Deputy (at the Request of the Creditors) is to certify the Obligations into the Chancery: And the Recognisees, their Ex-
C 3 cutors,

The Practising Attorney :

cutors, &c. shall have in every Respect against the Recognizors, their Heirs, &c. such Process and Execution as hath been had upon an Obligation of the Statute Staple, the Remedy whereon is Imprisonment of the Debtor, Arrest of his Goods, and Sale thereof to satisfy his Creditors.

Upon sealing Process for Execution, the King shall have a Half-penny in the Pound : The Justices, or Mayor and Recorder's Fee for taking the Recognizance, is 3 s. 4 d. The Clerk's Fee is the same ; and his Fee for certifying is 1 s. 8 d. Taking greater Fees, or taking Recognizances, except between Merchants of the Staple, for Merchandize of the said Staple bought and sold, is liable to a Penalty of 40 l.

16, 17 Car. 2.
c. 5.

When Recognizances are extended, they shall not be delay'd by Omission of any Part of the Lands, &c. extendible, saving the Remedy of Contribution, where the Lands shall be extended out of such an Extent, &c.

8 Geo. c. 25.

The Clerk of the Recognizances is to keep three Parchment Rolls ; one whereof to contain the Recognizances taken before the Chief Justice of B. R. one other of them, those taken before the Chief Justice of C. B. and the other, those taken by the Mayor of the Staple at *Westminster*, &c. and the Persons before whom taken, and the Parties acknowledging, are to sign their Names to the Roll, as well as to the Recognizances.

Costs and Damages. 23
H. S. c. 15.

If the Plaintiff be nonsuit or overthrown by lawful Trial in any Action, Bill, or Plaint for Trespas upon the Statute 5 R. 2. or for any Debt, or Covenant, Contract, Detinue, Account

Account upon the Case, or upon any Statute, the Defendant shall have Costs, to be assess'd by the Judges, and recovered as the Plaintiff might have recovered his, in Case Judgment had been given for him.

In personal Actions, brought in the Courts ^{43 Eliz. c. 6.} at *Westminster* (not being for Lands or for Battery) when it shall appear to and be signify'd by the Judges, that the Debt or Damages to be recovered, amount not to the Sum of 40 s. or above, the Plaintiff shall have no more Costs than Damages awarded, but may have less at the Discretion of the Judges.

Judges are to certify that a Battery is sufficiently proved by the Plaintiff, to entitle ^{23 Car. 2. c. 2.} to more Costs than Damages, where the Damages are under 40 s. In Actions of Trespas, they are likewise to certify that the Freehold or Title was in Question, to incur such Costs.

When any Person shall sue forth of *B. R.* ^{8 Eliz. c. 2.} any *Latitat*, *Alias*, &c. against any Person, and he doth appear and put in Bail; if the Plaintiff do not declare within 3 Days after, or after Declaration, delays or discontinues his Suit, or be nonsuit, the Judges of that Court shall award Damages against the Plaintiff. And by this Statute, treble Damages and a Fine are incurr'd where any Person maliciously, for Vexation and Trouble, causes any Person to be arrested or attached to answer at the Suit of any Person, where there is none such, or without the Consent of the Party. Also by *Westm. 2.* treble Damages are awarded for Distress wrongfully taken,

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on Purpose to injure a Person, &c. And in Actions of Trespafs for forcible Entry, in Cases of Waste, &c. 8 H. 6. c. 9. 6 Ed. 1. c. 5.

8 & 9 W. 3.
c. 11.

Where several Persons are made Defendants in any Action of Trespafs, &c. and one is acquitted, all shall recover Costs; unless the Judge certify there was a reasonable Cause, for making such Person or Persons Defendants. But in all Actions of Trespafs, where the Trespafs is prov'd wilful and malicious, the Plaintiff shall recover Damages and full Costs.

In all Actions upon any Bond or penal Sum for Non-performance of Covenants, the Plaintiff may assign as many Breaches as he thinks fit; and the Jury shall bring in Damages for those he shall prove broken: On the Payment of which, the Defendant and his Lands, &c. shall be discharged; but the Judgment entered shall stand as a further Surety to answer further Breaches.

Note.

Costs and Charges are given occasionally in many particular Actions; but no Costs shall be awarded when any Action is sued to the King's Use; nor in Actions against Executors, for Goods out of their Possession, &c.

Essoin. Stat.
Marl. 52 H.
3. c. 13.

After Issue join'd in Dower, Darrein Presentment, or *Quare Impedit*, one Essoin shall be only allow'd; and if the Party come not at the Day given, or make Default the second Day, the Inquest shall be taken, and Judgment given.

Error. 31 Ed.
3. c. 12.

The Lord Chancellor and Treasurer, calling to them such of the Justices as they think fit,

fit, as also the Barons of the *Exchequer*, are to examine erroneous Judgments given in the *Exchequer*; and if any Error be found they may correct the Rolls.

The not coming of the Chancellor and Treasurer, at the Day of Adjournment in any Suit of Error, shall not be any Discontinuance of the Writ of Error; provided both the Chief Justices, or either of those great Officers be there: But no Judgment shall be given, unless both those Officers be there present. Any three of the Justices of the *Common Pleas*, or Barons of the *Exchequer*, may receive Writs of Error, Award, Process, &c. But no Judgment shall be given therein without the full Appearance of six, according to the Statute 27 *Eliz. c. 8.* 31 *Eliz. c. 1.*

Where a Judgment is given in *B. R.* in Debt, Detinue, Accompt, Action upon the Case, Trespas, &c. The Plaintiff or Defendant may sue forth of the Chancery a Writ of Error, commanding the Chief Justice to cause the Record to be brought before the Justices of the *Common Pleas*, and Barons of the *Exchequer*, into the *Exchequer* Chamber; which Justices and Barons, or any six of them (being of the Coif) have the Power to examine and reverse or affirm the said Judgment; other than for Error concerning the Jurisdiction of the Court of *B. R.* or for want of Form in any Writ, Return, Plaint, Declaration, &c. And afterwards the Record shall be remanded, that the *King's Bench* may proceed: But such Reversal or Affirmance shall not be final, but that the Party who

who finds himself grieved may sue in Parliament.

If a Plaintiff or Defendant get Judgment in *C. B.* or in any inferior Court of Record, the Party condemn'd may bring his Writ of Error to remove the Judgment into *B. R.* where it shall be determined.

3 *Jac. 1. c. 8.* No Execution shall be stay'd upon any Writ of Error, or Superfedeas thereupon, for the reversing of a Judgment in Action of Debt, or upon any Contract in the Courts at *Westminster*, &c. Unless the Plaintiff with two sufficient Sureties, shall be first bound to the Party for whom Judgment is given, by Recognizance in the same Court, in double the Sum adjudg'd, to prosecute the Writ of Error with Effect, and to pay all Debts, Damages, and Costs, if the Judgment be affirmed: And 13 *Car. 2. c. 2.* this extends to Actions upon the Case, Trover, Detinue, Trespass, &c.

16, 17 *Car. 2. c. 8.* No Execution shall be staid in the King's Courts at *Westminster*, &c. by Writ of Error, after Verdict and Judgment thereupon, in any personal Action, unless a Recognizance according to 3 *Jac. 1. c. 8.* be first acknowledged: Nor shall Execution be stay'd by Writs of Error in any Judgment after Verdict in Dower, or *Ejectione Firmæ*, unless the Plaintiff in such Writ of Error become bound to the Defendant in such Sum as the Court shall think fit; that if the Judgment be affirm'd, or the Writ discontinued, &c. he will pay such Damages and Sums of Money (to be ascertain'd by Writ of Enquiry) as shall be awarded, and Costs of Suit.

But

But Writs of Error brought by Executors and Administrators, Actions on penal Laws, Indictments, Presentments, Informations, &c. are excepted out of this Statute.

In all Actions, Real, Personal and mix'd, ^{30 Car. 2. c. 6.} the Death of either Party betwixt Verdict and Judgment, shall not be alledg'd for Error, so as the Judgment be entered within two Terms after the Verdict.

Both these Statutes are made perpetual. See after *Amendments*, and *vide* Stat. 5 Geo. c. 13. under *Writs of Error* in B. R.

Jurors impanell'd are to be the next Neigh- ^{Furors.} bours, most sufficient, and least suspicious, or ^{28 Ed. 1. c. 9.} the Officer that returns them shall forfeit double Damages. And if a Juror take any Thing of either Party to give his Verdict, he shall forfeit ten Times as much as taken, or suffer a Year's Imprisonment. Stat. 38 E. 3. c. 12.

The 35 H. 8. c. 6. directs Issues to be levied on Jurors for Non-appearance; and although the Jury be made full by the Tales, yet the Jurors in Default shall forfeit Issues; but upon a reasonable Excuse, prov'd by the Oaths of two Witnesses, these Issues for Default may be discharged.

By the Stat. 4 & 5 W. & M. c. 24. the ^{4 & 5 W. & M.} Qualification of Jurors is declared to be 10 l. ^{M. c. 24.} *per Annum* Freehold or Copyhold; and of Tales-men 5 l. a Year. And by 7 & 8 W. 3. c. 32. if any Plaintiff or Demandant being at Issue, shall bring to the Sheriff any Writ of *Venire Facias*, upon which a Writ of *Habeas Corpora* or *Distingas*, with a *Nisi prius* Issue, in Order to try such Issue at the Assizes; and

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and such Plaintiff shall not proceed to Trial at the first Affizes after the Teste of such *Habeas Corpora*; in all such Cases (other than where Views by Jurors shall be directed) the Plaintiff or Demandant may sue forth a new Writ of *Venire* to try the Issue at any other Affizes, and have a *Habeas Corpora* or *Distringas* with a *Nisi prius*, whereupon he may proceed to Trial: And so where the Defendant or Tenant shall be minded to bring the Cause to Trial by *Proviso*.

See now the
Stat. 3 Geo. 2.
post. pa. 32.

Constables, &c. of Towns in each County at *Michaelmas* Quarter-Sessions yearly, are to return and give in to the Justices of the Peace, Lists of Persons between the Age of 21 and 70 Years, qualified to serve on Juries, Duplicates whereof are to be delivered to the Sheriffs of Counties by the first of *January* following: And no Sheriff shall impanel or return any Person to serve in any Jury at the Affizes, &c. but such as shall be named in the said Lists: Doing otherwise, or neglecting his Duty therein, or excusing any Person for Favour or Reward, he shall forfeit 20*l*. And Constables, &c. failing to make such Returns and Lists as aforesaid, shall forfeit 5*l*.

Every Summons of Jurors to serve, shall be made by the Sheriff or Officer 6 Days before, shewing to the Person the Warrant under the Seal of Office, where he is nominated to serve: And in Case of such Jurors Absence from Home, a Note in Writing under the Hand of the Officer shall be left at his Dwelling-house.

None

None shall be returned to serve on Juries at the Assizes, &c. in the County of York above once in 4 Years : And the Grand Inquest is to consist of Freeholders and Copyholders, having each 80 l. *per Annum* Lands. *Vide* Stat. 3 *Annæ* c. 18. which directs, that Justices of Peace in all Counties of *England* and *Wales*, shall yearly at the Quarter-Sessions next after the 24th of *June*, issue Warrants to Constables, to meet and make Lists of Persons qualified to serve on Juries, according to the Act 4 & 5 *W. & M.* with their Titles and Additions, &c. as directed by 7 *W. & M.* c. 32.

The Stat. 3 *Geo.* 2. c. 25. For better Regulation of Juries, Enacts,

(1.) That all Persons who by a Stat. 7, 8 *W.* 3. and by a Clause in 3, 4 *Annæ*, were to give in, or by this Act are to make up, true Lists of the Names of Persons qualified to serve on Juries, in Order to assist them in compleating such Lists, shall on Request to any Parish Officer (having in his Custody the Rates of the Poor, or Land Tax) have Free Liberty to inspect such Rates, and take the Names of Freeholders, Copyholders, or others qualified to serve on Juries within their respective Parishes or Precincts : And shall yearly twenty Days at least before *Michaelmas*, on two or more *Sundays*, fix on the Door of the Church, Chapel, and other Places of religious Worship, within their Precincts, an exact List of Persons to be returned by them to the Quarter-Sessions, and leave a Duplicate thereof with the Churchwarden, Chapel-warden, or Overseer of the Poor,

to

Stat. 3 *Geo.* 2.
c. 25. for Re-
gulating Ju-
ries.

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to be perused by the Parishioners without Fee or Reward, That so Notice may be given of Persons qualified, who are omitted, or of Persons inserted by Mistake; and if any not qualified to serve shall find his Name in the List; and the Person who made it shall refuse to omit him, or think it doubtful whether he ought to be omitted; the Justices at the Quarter-Sessions, on the Complainant's Oath, or other Proof, are to order his Name to be struck out of such List, and not entred in the Clerk of the Peace his Book.

(2.) If any Persons required by the said Acts to make such Lists, shall wilfully omit any whose Names ought to be inserted, or insert any who ought to be omitted, or take Money, or other Reward for omitting or inserting any, he shall forfeit 20 s. for every such Offence, on Conviction before one or more Justices of Peace on Confession of the Offender, or Proof by one or more Witnesses; one half to the Informer, and the other to the Poor of the Parish; and if not paid in 5 Days, to be levied by Distress and Sale of Goods, by Warrant from one or more Justices, who shall certify the same to the next Quarter-Sessions, and the Justices there shall direct the Clerk of the Peace to insert or strike out such Names omitted or inserted in the Lists.

Note; This Discretionary Power in the Justices of the Peace, may be of mischievous Consequence, and is already become a Grievance.

(3.) Duplicates of the said Lists are to be transmitted by the said Clerk to the Sheriff of the County, or his Under-Sheriff, during the Quarter-

Quarter-Sessions, or within 10 Days after, in Order for his returning Juries thereout; and the Sheriff or Under-Sheriff, shall enter their Names Alphabetically, with their Additions and Places of Abode in a Book for that Purpose: And every Clerk of the Peace neglecting his Duty therein Forfeits 20*l.* to such as shall inform or prosecute for the same until the Party be convict thereof, on an Indictment at any General Quarter-Sessions for the same County.

(4.) If any Sheriff or other Officer, to whom the Returns of Juries belongs, summon any in any Cause to be tried before the Justices of Assize or *Nisi prius*, or Judge of the Great Sessions in *Wales*, or of the Counties Palatine, whose Name is not in the Duplicate; or if any Clerk of the Assize, Judges Associate, or other Officer, Record the Appearance of any who did not appear, the Judge shall upon Examination in a summary Way, Fine such Officer for Person so summoned, or whose Appearance shall be falsely Recorded, as they shall think meet, not exceeding 10*l.* nor less than 40*s.*

(5.) And for preventing of Abuses by Sheriffs, Under-Sheriffs, Bailiffs, or other Officers concerned in summoning or returning Jurors; none shall be returned to serve on Trials at any Assizes, or *Nisi prius*, &c. who have served within one Year before in the County of *Rutland*, 4 Years in the County of *Tork*, or 2 Years in any other County, not being a County of a City or Town; and if any Sheriff, &c. shall transgress herein, any Judge of Assize, &c. may on Examination in a summary

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mary, Way, Fine him, not exceeding 5*l.* for one Offence. See Stat. —

(6.) The Sheriff, or any other to whom the Return of Juries belongs, shall enter in a Book, to be kept for that Purpose, the Names of Persons summoned, and serving as Jurors, with their Additions and Places of Abode, alphabetically; and also the Times of their Services. And every one so attending or serving shall (on Application to such Sheriff, Under-Sheriff, &c.) have a Certificate testifying such his Attendance or Service, which they are to give without Fee or Reward; and the said Book shall be transmitted by such Sheriff, &c. to his Successor.

(7.) No Sheriff, Bailiff, or Officer, shall take any Reward to excuse any Person from serving. And no Bailiff shall summon any but such whose Names are specified in a *Mandate*, signed by the Sheriff, and directed to such Bailiff on a Penalty not exceeding 10*l.* according to the Nature of the Offence.

(8.) And whereas by the 7, 8 *W. 3.* and 3, 4 *Annæ*, All Constables, &c. are to give in true Lists at the Quarter-Sessions for each County; which hath been found Inconvenient and Expensive to Constables, &c. such Quarter-Sessions being often held at a great Distance from their Abode; *For Remedy thereof, 'tis Enacted*, That after the 1st of *Sept.* 1730, it shall be sufficient, after they have compleated such Lists for their respective Parishes or Precincts, to subscribe the same before one or more Justices of the Peace, and at the same Time attest the Truth of such Lists, upon Oath to the best of their Knowledge

ledge; and the said Lists being signed by the Justice shall be delivered by the Constable to the *Head or Chief Constable* of the hundred or Division, who is to deliver in such Lists to the Quarter-Sessions in open Court, attesting on Oath his Receipt of them from the other Constables; and that no Alteration has been made therein since his Receipt thereof; and the Lists so delivered (signed) &c. shall be as effectual as if delivered in by the Constables.

(9.) And further, That the Name of each Person summoned and impanelled shall be written with his Addition, and Place of Abode, in distinct Pieces of Parchment, or Paper of equal Size and Bigness, and delivered to the Marshal of the Judge of Assize, or *Nisi prius*, &c. By the Under-Sheriff, or his Agent; and shall by Direction of such Marshal be rolled up all in the same Manner, as near as may be, and put in a Box or Glass, and when a Cause is brought to be tried, some *indifferent Person*, by Direction of the Court, shall in open Court draw out 12 of the Parchments or Papers one after another; and if any of the Persons drawn shall not appear, or be challenged, and set aside, then a further Number shall be drawn till 12 be drawn, who shall appear, which shall be the Jury to try the Cause; and the Names of the Persons so drawn and sworn, shall be kept a-part in some other Box or Glass, till they have given in their Verdict, and the same is recorded, or till they shall, by Consent of the Parties, or Leave of the Court, be discharged; and then their Names shall be rolled up again, and returned

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ed to the former Box (or Glass) to be kept with the other Names, as long as any Cause remains to be tried.

(10.) Every Person whose Name shall be drawn, and shall not appear after 3 Times calling, upon Oath made that he hath been lawfully summoned, shall forfeit and pay for every Default, not exceeding 5 *l.* nor less than 40 *s.* unless reasonable Cause of *Offence* (for *Absence*) be proved by Oath or Affidavit, to the Satisfaction of the Judge who sits.

(11.) Persons having Estates in Land in their own Right of the yearly Value of 20 *l.* over and above the reserved Rent payable therout, being held by Lease for the absolute Term of 500 or 99 Years, or any other Term determinable on one or more Lives, shall be inserted in the Lists, and in the Freeholders Book; and the Persons appointed to make such Lists are hereby directed to insert them accordingly: And such Lease-holders may be summoned and impanelled to serve on Juries as Freeholders may, and subject to the like Penalties, for not appearing.

(12.) The Courts at *Westminster*, on a Motion made in behalf of the King, or of any Plaintiff or Defendant, in any Indictment or Information for any Misdemeanor, or in any Action or Suit whatsoever, brought or *presented* (for prosecuted) in any Court there, are to order a Jury to be struck before the proper Officer, for the Trial of Issues joined and triable by a Jury of 12 Men. As special Juries are usually struck in those Courts, and the Jury so struck shall be the Jury returned,

turned, for the Trial of that Issue. And the Person who shall apply for such Jury, shall pay the Fees for striking it, and shall have no Allowance for the same on the Taxation of Costs.

(13.) Sheriffs shall not return any Person to serve on a Jury for Trial of any Capital Offence, who would not be Qualified in Civil Cases.

(14.) This Act shall be openly read once in every Year at the General Quarter-Sessions in England and Wales.

Quære the Continuance?

Judgments given shall continue; and the Parties, for whom they are so given, shall be in Peace until they are reversed by Attaint or Error. *Judgment.* 4 H. 4. c. 13.

No Judgment on Record shall be reversed or annulled for Error assigned, by Reason of the razing or interlining of any Record; Writ, Process, &c. or of any Addition or Diminution of Words, Letters, Titles, &c. found in the same, which may be reform'd by the Judges; (so that Misprisions of Clerks shall not annul a Judgment.) 8 H. 6.

After an Issue tried, Judgment shall be given notwithstanding any Jeofail or Mispleading: (But this Statute helps only Matters of Form, not of Substance.) 32 H. 8. c. 30.

After Verdict given in any Court of Record, there shall be no Stay of Judgment or Reversal for want of Form in any Writ, Count, Declaration, Plaint, &c. or for want of any original Writ, by Reason of any imperfect or insufficient Returns of Sheriffs, or for want of any Warrant of Attorney, &c. But this Act does not extend to any Writ, 18 Edw. c. 14.

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Declaration, or Suit of Appeal of Felony, or Murder, or to any Indictment, Presentment, or Process upon any penal Statute.

21 Jac. 1. c.
13.

After Verdict given in any Court of Record, the Judgment thereupon shall not be stayed or reversed for any Variance in Form only between the original Writ or Bill, and the Declaration, Plaint or Demand; or for want of Averment of the Parties being living, so as it be proved he or they be in Life; or for that the *Venire Facias*, *Habeas Corpus*, or *Distingas*, was awarded to a wrong Officer, upon any insufficient Suggestion; or that the *Vifne* was in some Part misawarded, &c. or for misnaming any of the Jurors, in any of the Writs or Returns thereof, so as *Constat de Persona*; or for want of a Return of any of the said Writs, so as a Panel be returned; or for that the Officer's Name is not set to the Return, so as it appear the Writ was returned by him; or by Reason that the Plaintiff in *Ejectione Firme*, or in any personal Action, being under Age, appeared by Attorney, and the Verdict pass for him.

But this Statute likewise extends not to Suits of Appeal of Felony, &c. or Actions, or Informations upon any penal Statute.

16, 17 Car. 2.
c. 8.
Vide Statute
4 Anne, c. 16.
post 28.

After Verdict given in the Courts of Record at *Westminster*, &c. Judgment shall not be stayed or reversed for Default in Form, or want of Pledges, or Default of entering Pledges; or for Default of bringing into Court of any Bond, Bill, Indenture, or other Deed; or for not alledging the Bringing into Court of Letters Testamentary, &c. or by Reason of the Omission of *Vi & Armis*,

or

or *contra Pacem*; or for mistaking of the Christian Name or Sur-name of either Party, Sum of Money, Day, Month, or Year, being rightly named in any Writ or Record preceding, whereupon the Plaintiff might have demurred, and shewed the same for Cause.

Nor for want of the Averment of *Hoc Paratus est Verificare*, or *Hoc Paratus est Verificare per Recordum*; or for that there is no right *Venue*, so as the Cause were tried by a Jury of the proper County or Place where the Action is laid: For these not being against the Right of the Matter of the Suits, nor whereby the Issue or Trial are altered, are amendable.

See Stat. 5 Geo. 1. for preventing the Arresting and Reversing of Judgments after Verdict.

Where before Justices of Assize, the Parties are adjourned for some Difficulty in Law upon the Matter found; in this Case the Plaintiff shall not be nonsuited, although the Verdict pass against him.

Nonsuits.
2 H. 4 c. 7.

Unless the Plaintiff nam'd in any Writ, Bill, or Process in *B. R.* or *C. B.* shall put into the Court a Declaration against the Persons arrested, in personal Actions, or *Ejectione Firme* of Lands or Tenements, before the End of the Term next following after Appearance, then a Nonsuit for want of a Declaration may be entered against the Plaintiff in the said Courts respectively.

13 Car. 2. c. 26

Note; the Effect of a Nonsuit, is to set the Matter at large again; whereupon Costs shall be awarded to the Defendant.

Executions.

West. 2. c. 18.

13 E. 1. 2 Inst.

394, 449.

Where a Debt or Damage is recovered in the King's Court, the Party may at his Choice have a *Fieri Facias* of the Goods and Chattels of the Debtor; or a Moiety of his Land by reasonable *Extent*, 'till the Debt be levied; and this last Writ is call'd an *Elegit*. See *Westm. 2. c. 18 & 39.*

A Writ of Execution shall be within the Year, but after the Year a *Scire Facias*; whereupon if Satisfaction be not made, or good Cause shewn, the Sheriff shall be commanded to do Execution.

32 H. 8. c. 5.

If Lands deliver'd in Execution, be recovered from the Tenant in Execution, before the Debt and Damages are levied; a *Scire facias* shall issue out of the Court from whence he had the Execution, returnable into the same Court, on the Day of Return whereof, if the Defendant make Default, or appear and do not plead a sufficient Cause (other than the former Acceptance of the Lands) to avoid the Suit for the Residue of the Debt and Damages, the Court shall issue forth a new Writ of Execution for the levying thereof.

1 Jac. 1. c. 13.

If any taken in Execution, be delivered by Privilege of Parliament; as soon as such Privilege ceaseth, the Plaintiff may sue out a new Execution against him; and the Sheriff or other Officer, shall not be chargeable for the first Arrest. But this Act shall not lessen the Punishment of any by Censure of Parliament, who shall presume to procure such an Arrest.

21 Jac. 1. c.

24.

The Party at whose Suit any Person shall stand charged in Execution for Debts or Damages recover'd, his Executors, &c. may, after

after the Death of the Person so charged in Execution, lawfully sue forth new Execution against the Lands and Tenements, Goods and Chattels of the Person deceas'd, in like Manner as if the Person deceased had never been taken in Execution. But this Statute shall not extend to Lands sold *bona fide* (after the Judgment given) when the Money rais'd thereupon is paid to Creditors in Discharge of due Debts.

The Sheriff must endorse the Day, that the *Fieri Facias* was delivered unto him, for ^{29 Car. 2. c. 3.} from that Day the Goods are bound; and that Writ shall be executed and satisfied before another that comes afterwards. And by this Act Sheriffs may deliver in Execution on all Lands, &c. whereof others shall be seized in Trust for him against whom Execution is had, on a Statute, Judgment, &c.

Prisoners in Execution escaping, may be ^{8, 9 W. 3. c. 27. 8 Anne. c. 17.} retaken by a new *Capias* or other Execution. Where Goods or Chattels in Messuages, Lands, &c. leased for Years, &c. are taken in Execution, the Party shall pay the Landlord one Year's Rent before Removal. Stay of Execution, see *antra Error*.

Where an Exigent is awarded, a Writ of ^{Exigent and Outlawry.} Proclamation shall be issued out to the Sheriff to make three Proclamations for the Defen- ^{6 H. 8. c. 4.} dant to yield himself, before an Outlawry shall be pronounc'd.

In every Action Personal where an Exigent shall be awarded, a Writ of Proclama- ^{31 Eliz. c. 3.} tion shall be awarded, and issue out of the same Court, directed to the Sheriff of the

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County where the Defendant is dwelling, and shall contain the Effect of the Action; and thereupon the Sheriff shall make three Proclamations, one in full County, another at the Sessions, and the last at or near the Church-Door of the Parish where the Defendant was dwelling at the Time of awarding the Exigent, upon a *Sunday* after Divine Service: And if he dwell in no Parish, then in the Parish next adjoining to his Place of Abode. And all Outlawries otherwise had shall be void.

In Real Actions, after Summons upon the Land (14 Days at least before the Return thereof) Proclamation of the Summons shall be made upon a *Sunday* in Manner aforesaid where the Land lies. If the Summons be not so proclaim'd, no *Grand Cape* shall be awarded, but an *Alias* and *Pluries* Summons, until a Summons and Proclamation be duly made.

Before Allowance of a Writ of Error, or reversing an Outlawry by Plea, &c. the Defendant in the original Action shall put in Bail to appear and answer, and also to satisfy the Condemnation, if the Plaintiff begins his Suit before the End of two Terms next after the Allowance of the Writ, or avoiding the Outlawry.

4, 5 W. & M.
c. 22.

An Exigent and Proclamation shall issue out upon criminal Matters, to be delivered to the Sheriff three Months before the Return thereof: And this Writ of Proclamation, &c. shall be made according to the Form of the Statute 31 *Eliz.* This Stat. is made perpetual.

Outlawed

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Outlawed Persons may appear by Attorney, and reverse the Outlawry without Bail, unless special Bail be required: And the Sheriff may take an Attorney's Engagement to appear; also the Outlaw may give the Sheriff Security for Appearance and Reversal by Attorney, &c.

4, 5 W. & M.
c. 18.

Prisoners in the *King's Bench* and *Fleet*, on Contempt, Mesne Process, or Execution, shall be actually detained within the said Prisons, or the Rules of the same, till discharged by Law: And the Keepers of Prisons suffering any Prisoner committed on Mesne Process, or Execution, to be out of the Rules, except on a *Habeas Corpus*, or Rule of Court, it shall be deemed an Escape.

Prisons, and
privileged
Places. 8, 9
W. 3. c. 17.
Vide ante
Arrests.

Persons obtaining Judgment in an Action of Escape against the Marshal or Warden of the said Prisons, shall have not only the Remedy already allow'd by Law, but the Profits of the said Marshal or Warden, shall be sequestred towards Satisfaction of the Debt, with Costs and Damages.

If the Keeper of any Prison take Money to connive at an Escape, he shall forfeit 500*l*. and his Office. But this Act shall not make void the Securities given by Prisoners for their Lodgings, out of the said Prisons, within the Rules.

No Retaking shall be given in Evidence in an Escape, unless specially pleaded, and Oath made by the Keeper of the Prison, that such Escape was without his Consent. And every Keeper's refusing, after one Day's Notice, to shew the Prisoner in Execution to the Creditor

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ditor or his Attorney, shall be judg'd an Escape.

Persons desiring to charge any Person with an Action or Execution, shall at their Request have a Note in Writing from the Keeper of the Prison, whether such Person be a Prisoner or not, under Forfeiture of 50*l*. And such Note shall be sufficient Evidence.

Any Person having Cause of Action against the Warden of the *Fleet*, may file a Bill in the Common Pleas or the Exchequer, and a Rule being given to plead in eight Days, Judgment shall be signed against the said Warden, if he plead not within three Days after the Rule is out.

Persons having Cause of Action against any Prisoner in the *Fleet*, entering a Declaration, and delivering a Copy thereof to such Prisoners, in any personal Action, or to the Turnkey of the *Fleet* after a Rule to plead, to be out at eight Days, and Oath made before a Judge of the Delivery of such Declaration, may sign Judgment against such Prisoner or Defendant.

No Prisoners shall pay Chamber-Rent in the *King's Bench* or *Fleet* Prisons, longer than while they are actually in Possession of such Chambers, and not above 2*s*. 6*d*. per Week. And if the Keepers of any Prison take more, they shall forfeit 20*l*.

Persons having Money owing from any Person in any pretended privileged Places, as the *White Fryers*, *Savoy*, *Salisbury Court*, &c. may upon Process taken out, require the Sheriffs of *London* and *Middlesex*, &c. to take the *Posse Comitatus*, and arrest such Person,

or seize his Goods upon Execution; and such Sheriffs or Officers neglecting or refusing, to forfeit 100 l. Persons opposing or resisting such Officers, shall forfeit 50 l. be imprison'd, pillory'd, &c. And Persons making Rescous, to forfeit to the Plaintiff 500 l.

And Transportation for seven Years is inflicted, for Non-payment of the Forfeiture with Costs of Suit, within one Month after Judgment for Recovery thereof. It is made Felony by a late Act to resist the executing of Writs, &c. in the *Mint*. Vide 9 Geo.

Persons committed or charged in Custody *1 Ann. c. 6*, in the *King's Bench* or *Fleet* Prisons, going at large, upon Oath thereof in Writing before a Judge, an Escape-Warrant shall be granted directed to all Sheriffs, &c. throughout *England*, to retake the Person escaping, and commit him to the common Gaol, there to remain till the Debt is satisfied.

The Bail for any Person so retaken, may prosecute out of the Courts at *Westminster* a Writ to the Sheriff, commanding him to keep such Prisoner in Discharge of his Bail. And if the Sheriff or his Officer suffer the Prisoner to escape, they shall be liable as the Marshall of the *King's Bench*, or Warden of the *Fleet* are for such Escapes. The Sheriff making Default in Return of such Writ, and whether the Prisoner be in his Custody, shall forfeit 50 l.

Persons taken by Virtue of *1 Ann. c. 6. 5. Aug. c. 9*, instead of being committed to the common Gaol of the County where taken, shall be committed to the Prison where the Sheriff keeps

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keeps Debtors; and in Case of Escape the Sheriff shall be answerable, as in Case of any other Escape.

It shall be lawful to take Persons upon a Sunday, by Virtue of Escape-Warrants, on this or the former Act. *Recognizances, &c.* vide ant. Pa. 2. the Stat. 2 Geo. 2. c. 21.

Privilege.

12 W. 3. c. 3.

Peers and Members of Parliament, with their Servants, &c. are privileged; but by 12 W. 3. c. 3. Actions may be prosecuted in his Majesty's Courts at *Westminster*, against any Person entitled to Privilege of Parliament immediately after Dissolution or Prorogation, until a new Parliament, or the same is re-assembled; and immediately after Adjournment of both Houses for above fourteen Days, until re-assumed: And the said Courts during such Time are to proceed to give Judgment, make final Orders, &c. But there is a Proviso that this shall not subject any of the House of Commons, or any intitled to Privilege of Parliament, to arrest during Privilege.

Persons having Cause of Action against Lords of Parliament during such Time as aforesaid, may have such Process out of B. R. and C. B. and the Exchequer, as they might out of Time of Privilege; and may have Process against any entitled to Privilege, out of the said Courts by Summons, Distress Infinite, or by Original Bill, Summons, Attachment, &c. which the said Courts are to issue against them 'till they appear, or file common Bail.

Persons

Persons exhibiting Bills, against any intitled to Privilege of Parliament, in the Chancery, Exchequer, &c. may proceed upon leaving a Copy of the Bill with the Defendant, or at his House, Lodging, or last Place of Abode; and for want of Appearance, or Answer, or for Non-performance, or Breach of Order or Decree, may sequester the Estate of the Party, as is used where the Defendant is a Peer; but not arrest the Body of any privileged Persons during Continuance of Privilege.

The Plaintiff stay'd by Privilege of Parliament, shall not be barred by the Statute of Limitations, nonsuited, dismissed, &c. but shall on the rising of the Parliament be at Liberty to proceed to Judgment and Execution. *Vide ante p. 17. Stat. 1 Jac. 1.*

Any Action or Suit may be prosecuted in the Courts at *Westminster*, against any Officer of the Revenue, or other Officer of Trust, for any Misdemeanor, Breach of Trust, &c. And no such Suit, or Execution thereupon, tho' such Officer be a Lord or Member of Parliament, or otherwise entitled to Privilege, shall be stay'd by Colour of such Privilege: But the Person of such Officer, being a Peer or Member of Parliament, shall not be arrested. But such Process shall issue against such Officer, being a Peer, as should have issued against him out of the Time of Privilege: And Summons, Distress Infinite, &c. shall be issued against a Member of Parliament, till he appear. 2 Ann. c. 18.

Prohibits, Arrests of Ambassadors, publick Ministers, and their Servants; all Writs and 7 Ann. c. 12.

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and Processes against them whereby they may be arrested, &c. shall be null and void. Any Persons suing forth any such Writs, and all Attornies, &c. executing of the same, being convicted before the Lord Chancellor, the Chief Justices of B. R. and C. B. or any two of them, shall be deem'd Violaters of the Laws of Nations, and suffer such Pains, &c. as the Lord Chancellor and Justices shall judge fit.

But no Merchant or other Trader within the Description of the Statutes against Bankrupts, in the Service of any such Ambassador, &c. shall have the Benefit of this Act. And the Names of Ambassadors Servants are to be registred in the Secretary of State's Office, and be transmitted to the Sheriffs of London and Middlesex, who shall hang up the same in some publick Place in their Offices, whereunto all Persons may resort without Fee.

And no Person shall be proceeded against for arresting the Servant of any Ambassador, &c. who is not registred, &c. *ut supra*.

Protection.
33 Ed. 1.

A Challenge shall be entred against a Protection of the King's Servant; and if the Country pass against him that cast the Protection, if he be Demandant, he shall lose his Writ, and be amerced.

35 Ed. 3.

Notwithstanding the King's Protection of his Debtor, other Creditors may proceed to Judgment against him, with a *Cesset Executio*, until the King's Debt be paid: And if the Creditors will undertake for the King's Debt, they shall have Execution against the Debtor;

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or, both for their own Debts, and what they have paid the King.

No Protection with the Clause *Volumus*, shall be allowed in Pleas of Trespafs, or Contracts made after the Date of the same Protection, &c. 1 R. 2. c. 8.

No Protection with the Clause *Quia Profecturus*, shall be allowed in any Plea whereof the Suit was commenced before the Date of such Protection; except in a Voyage where the King goes in Person, or other Voyage Royal, or in the King's Messuages: But this Act shall not infringe Protections with the Clause of *Quia Moraturus*; and if the Party protected tarry longer than a convenient Time in the County without going to the Service, or return from the Service, it shall repeal his Protection. 13 R. 2. c. 16.

Protections have been granted by Lords of Parliament, and Members of the House of Commons, (as well as by the Crown;) but they must be of Servants only, and not written ones, of Strangers.

Justices of Assize, Gaol-Delivery, and Oyer and Terminer, shall yearly at Michaelmas send all their Records and Processes (determined and put in Execution) into the *Exchequer*, which the Treasurer and Chamberlains there shall receive under their Seals, and keep them in the Treasury: But the said Justices shall first take out the Estreats of the said Record and Processes, to send them to the *Exchequer*, as they used to do. Records a-
mended, &c.
9 E. 3. c. 9.

Judges, where there shall be any Defects in a Record or Process, of one Letter or Syllable, 9 H. 5. c. 4.

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9 E. 3. c. 5.

Judges, where there shall be any Defects in a Record or Process, of one Letter or Syllable, 9 H. 5. c. 4.

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Syllable, &c. may amend the same as well after Judgment as before, so long as such Record or Process shall continue before them, And by 4 H. 6. c. 3. this Statute is made perpetual, but not to extend to Records or Process in *Wales*, or whereby any Person is outlawed.

8 H. 6. c. 12. No Record, &c. shall be annulled for Error assign'd by Reason of Razing, Interlineation, &c. And the Judges may reform all Defects in any Record; Process, Plea, Warrant, Writ, Panel, &c. Except on Appeals; Indictment of Treason and Felony, and the Outlawries of the same; and the Substance of the proper Names, and Additions left out in the original Writs, Exigents, &c.

Variance alledg'd between a Record and the Certificate thereof, shall be amended by the Judges. If a Record, Process, &c. or any Part thereof be exemplified under the Great Seal, and inroll'd; for any Error assign'd in the said Record, &c. in any Letter, Word, &c. varying, or contrary to the Exemplification and Inrollment, there shall be no Judgment annulled.

8 H. 6. c. 5. Judges may amend the Misprision and Default of Clerks of the Court, of Sheriffs and all other Officers, found before them in any Record or Process, or Return of the same, by Reason of writing one Letter, or one Syllable, too much or too little; except, in Records and Processes in *Wales*, and of Felonies and Treason, &c.

Imbeziling of Records is made Felony by Statute.

Returns of Writs, vide Tit. Writs.

None shall be Sheriff except he have sufficient Land in the County where he is Sheriff, to answer the King and his People. *Sheriffs. Stat. 4 Ed. 3. c. 9.*

No Sheriff shall continue in his Office above one Year, and then another fit Person shall be chosen in his Place by the Chancellor, Treasurer, and Chief Baron, taking to them the Chief Justices, if they be present; and this shall be done yearly at the *Exchequer*, the next Day after *All Souls*. *14 Ed. 3. c. 7.*

No Sheriff, or Under-Sheriff, or Sheriff's Clerk, shall continue in their Office above one Year: And no Under-Sheriff, Sheriff's Clerk, or Bailiff, &c. shall be Attorney in any of the King's Courts, so long as they bear such Office under the Sheriff. *42 Ed. 3. c. 9. 1 H. 5. c. 4.*

Sheriffs having serv'd the Office, are incapable to serve again within 3 Years then next ensuing, if there be others sufficient in the County to answer the King and his People. *1 R. 2. c. 11.*

No Sheriff or any of his under Officers shall act contrary to the Statutes *14 Ed. 3. c. 7. 42 Ed. 3. c. 9. &c.* on Pain to forfeit 200*l.* But an Exception is made in this Act, of Officers in *London*, and where any hath Free-hold or Inheritance in the Sheriff's Office. *23 H. 6. c. 8.*

No Sheriff shall let his County or Bailiwick to Farm; nor return upon any Inquest any Bailiff, Coroner, or Servant of theirs; nor shall they take any Thing for arresting, or omitting to arrest, save only for the Sheriff 20*d.* and the Bailiff that makes the Arrest 4*d.* and for the Gaoler for a Commitment 4*d.* &c. *10.*

E

And

The Practising Attorney:

And Sheriffs and their Officers shall take no Bond of any arrested Person but for Appearance, and to themselves only, and shall not take for it more than 4*d*.

Sheriffs and other Officers shall let to Bail Persons by him arrested, upon reasonable Sureties, having sufficient within the County: Persons in Ward by Condemnation, *Capias utlagatum*, Surety of Peace, &c. excepted.

Sheriffs are to make Deputies in the King's Court at *Westminster*; and Sheriff, Under-Sheriffs, Clerks, Bailiffs, &c. doing contrary to this Law, shall forfeit treble Damages to the Party griev'd, and 40*l*. to be divided between the King and Prosecutor.

- 11 H. 7. c. 15. No Sheriff, Under-Sheriff, &c. shall enter in the County-Court any Plaint in the Absence of the Plaintiff, or his Attorney, nor have above one Plaint for one Cause, in Pain of 40*s*. And the Defendant in the County-Court shall have lawful Summons, or the Bailiff guilty of any Default shall forfeit 40*s*.

Justices of Peace, upon Complaint made, have Power to examine these Matters, and are to certify into the *Exchequer*, on the like Penalty.

- 1 M^yc. 8. No Sheriff shall act as a Justice of Peace during his Shrievalty; and all Acts by them done as Justices of Peace shall be void.

- 27 Eliz. c. 12. Every Under-Sheriff before he intermeddles with his Office, shall before one of the Justices of Assize, or two Justices of Peace, &c. take the Oaths to the Government, and for the due Execution of his Office, the Form of which Oath is directed by this Act:
And

Of, Lawyer's Office.

51

And Sheriffs, Bailiffs, &c. entering upon their Offices, before they have taken the said Oaths, shall forfeit 40*l*.

No Sheriff, Under-Sheriff, or Bailiff, shall take more for serving an Extent or Execution than 12*d*. *per* Pound under 100*l*. and 6*d*. for every Pound above 100*l*. on Pain to forfeit treble Damages to the Party griev'd, and 40*l*. to the King and Prosecutor. 29 Eliz. c. 4.

But this Act does not extend to Fees of Executions within Cities or Corporations.

Sheriffs shall not break any Writs, or make any Warrant for Summons, or upon any Writ, for any Arrest or Attachment, &c. before they have the original Writ warranting the same: Doing otherwise they shall be sent to Gaol by the Judges, and not be enlarg'd 'till they have paid the Party griev'd 10*l*. and Costs and Damages, and 20*l*. Fine. 43 Eliz. c. 5.

Every Officer or Minister, who shall send out, or cause to be sent out, any Writ or Process or by whose Default any Writ or Process shall be sent out contrary to this Act, shall forfeit for every Offence to the Party griev'd 40*l*. and Costs and Damages. 21 Jac. 1. c. 5.

No Sheriff shall in Assize-Time, keep a Table for the Entertainment of any but his own Family or Retinue: Nor shall send any Present to any Judge of Assize for his Provision, or Gratuity to any of his Officers: And no Sheriff shall have above 40 Servants with Liveries attending upon him at the Assizes, or under 20, on Pain of forfeiting 200*l*. 13 & 14 Car. 2. c. 21.

But this Statute extends not to the Sheriffs of London and Middlesex, and the Sheriff

of *Westmoreland*, or any Sheriff of any City and County.

When any Sheriff shall have his *Quietus*, he shall be absolutely discharg'd, unless call'd in Question within four Years.

3 Geo. c. 15.

All Sheriffs are to take 1 s. in the Pound for Levying of Debts, &c. by *Levari facias* where the Whole exceeds not 100 l. and 6 d. in the Pound for every 100 l. above; for all Debts, &c. (except Post-Fines due to the King) leviable by *Fieri facias*, and *Extent*, 1 s. 6 d. in the Pound, where the Sum is under 100 l. and 1 s. if above: For Executing a Writ of *Habere facias Possessionem*, 1 s. in the Pound of the yearly Value of the Land, where the whole exceeds not 100 l. per *Annum*, and 6 d. if above. Sheriffs taking Poundage on a *Capias ad Satisfaciendum*, for a greater Sum than the real Debt, shall forfeit treble Damages, and 200 l.

On the Deaths of Sheriffs, the Under-Sheriffs of Counties are to act in their Places, and be answerable, till others are appointed. And the Offices of Under-Sheriff, County Clerk, Gaoler, &c. are not to be sold by the High Sheriff, on Pain of forfeiting 500 l.

The Oaths of Sheriffs are particularly appointed by this Law; and likewise their Fees, to be paid on passing their Accounts in the *Exchequer*. Their Accounts are not to be delay'd; and 4000 l. yearly is to be set apart at the *Exchequer*, and allow'd the Sheriffs of the several Counties of *England*, from 150 l. for *Yorkshire*, to 100 l. 60 l. &c. for other smaller Counties) to help to pass their Accounts,

&c.

Et. See more of Sheriffs, Tit. *Writs, Jurors,*
and *Execution.*

When a Deed or Writing is denied in *Witnesses.*
Court, wherein Witnesses are named, Pro- ^{12. Ed. 2.}
cesses shall be awarded to cause them to ap- ^{c. 2.}
pear; and if they come not at the great Dis-
tress return'd, or the Return be that they
have nothing, or they cannot be found, yet
Enquest shall proceed; but if the Witnesses
appear at the great Distress, and the Enquest
for some Cause remain untaken, the Wit-
nesses shall have like Day given, as is assign'd
for the taking of the Enquest; when if they
appear not, the Issues first return'd upon
them shall be forfeited.

The Stat. 5 *Eliz. c. 9.* enacts, That none
serv'd with Process out of a Court of Record,
to testify as a Witness, shall therein make
Default, (being tendered convenient Charges,
and having no reasonable Let,) on Pain to
forfeit to the Party griev'd 10*l.* and besides,
to yield him such further Recompence, as the
Judge of the Court shall think fit, according
to the Damage sustain'd, recoverable in any
Court of Record, by Action of Debt, Et.

By 29 *Car. 2. c. 3.* there must be three
credible Witnesses to a Will for Lands.

Where in the Chancery in one Case a *Writs, and*
Writ is found, and in another Case falling *Returns.*
under the like Law, and requiring the like *Westm. 2.*
Remedy, there is found none, the Clerks of ^{13 Ed. 1.}
the Chancery shall agree in making the Writ; ^{c. 24.}
or the Plaintiffs may refer the Matter to the
next Parliament, where (by the Advice of
Men learned in the Law) a Writ shall be
framed,

framed, lest the King's Court should fail to administer Justice.

13 Ed. 1.

c. 49.

And where the Law faileth in any Case, that Subjects may not depart from the King's Court without Remedy, Writs are to be provided in their Cases.

6 R. 2. Stat.

1, 2.

If in Writs of Debt, Accompt, and the like, it shall be declared that the Contract thereof was made in another County than is mentioned in the original Writ, such Writ shall abate.

21 Jac. 1.

c. 16.

Ordains a new Writ after Judgment, or Outlawry reversed, but not after the Plaintiff's Death. But by 8 and 9 W. 3. c. 10. Writs of Inquiry upon interlocutory Judgments, after the Death of the Parties, may be sued out.

Westm. 2.

c. 39. 13 E.

1.

See 2. Inst.

449, 450, &c.

29 Aff. Pl. 58.

Such as fear the ill Execution of Writs by the Sheriff, may deliver their Writs unto him in open County, and take of him or his Under-Sheriff a Bill, containing the Names of the Demandants and Tenants mentioned in the Writ, and require the Sheriff to put the Seal thereunto; and if the Sheriff refuse to do it, the Testimony of Knights and other credible Persons there present, that put their Seals to such Bill, shall be taken.

If the Sheriff will not return Writs delivered unto him, upon Complaint to the Justices, a judicial Writ shall issue to the Justice of Assize, to enquire by such as were present, whether they knew of the Delivrance thereof, and an Inquest shall be thereupon return'd; and if it be found by them that the Writ was delivered, Damages shall be awarded to the Party aggrieved.

29 Aff. Pl. 58.

Sheriffs

Sheriffs returning a *Mandavi Ballivo* of a Liberty, where there is none such, shall be punished. And where they return no Issues, or too small Issues, &c. falsely, Oyer of the Return shall be granted to the Plaintiff on Demand; and if he aver that the Sheriff might have returned greater Issues, a Writ shall be granted to make Enquiry what Issues the Sheriff might have returned, and being found by the Inquest, the Sheriff shall be charged with the Overplus, and be amerced for the Concealment. Sheriffs must beware of returning a Rescue, because they may take with them the *Posse Comitatus*, to do Execution, and punish their Bailiffs proving false, and Resisters, by Imprisonment.

Sheriffs and Bailiffs are to set their Names to their Returns, on Pain to be amerced: And Indentures are to be made between Sheriffs and Bailiffs of Franchises, of Returns, under their Hands, &c. Sheriffs altering the Returns delivered, shall pay double Damages. 12 Ed. 2. c. 5.

Delays of Sheriffs as to Returns, are punishable by Justices of Assize, and Damages shall be awarded, &c. 2 Ed. 3. c. 5.

Note also, by Stat. 13 Car. 2. ff. 2. c. 2. The Courts at *Westminster* were restrained from holding to Special Bail, except the Cause of Action expressed in the *Writ*, &c. were 20*l.* or upwards. See the Statute.

Vide ant. 27
Eliz. c. 5. 36.
E. 3. c. 15.

The STATUTE 4 & 5 Annæ
 c. 16. for Amendment of the
 LAW Enacts,

Demurrer.
See the Sta-
tutes antea
Tit. Judg-
ment.
Vide N. Lutw.
17.
6 Mod. 242.

THAT upon Demurrer joined in any Court of Record, the Judges shall give Judgment as the Right and Matter in Law shall appear, without regarding any Imperfection or Defect in any Writ, Return, Pleading, or Process; except those which the Party demurring shall set down as Causes of his Demurrer, notwithstanding such Imperfection or Defect hath been taken to be Matter of Substance, and not aided by 27 *Eliz. c. 5.* so as sufficient Matter appear, whereupon the Court may proceed to Judgment.

Immaterial
Traverse, De-
faults, &c.
5 Mod. 8.
Ray 50, 98,
182.

And no Exception shall be taken for any immaterial Traverse; or Default of entering Pledges upon Bill or Declaration; or not alledging the bringing into Court any Deed mentioned in the Pleadings, Letters Testamentary, or of Administration.

Omissions.
Cumberb. 297,
299, 300.
3 Leo. 29.
N. Lut. 111,
146, 350.

Nor for Omission of *Vi & Armis*, & *contra Pacem*, or either of them; or *Hoc Paratus est verificare*, or *Hoc Paratus est verificare per Recordum*, or *Prout Patet per Recordum*: But the Court shall give Judgment without regarding such Imperfections or Defects, or other Matter of like Nature, except shewed for Cause.

Statutes of
Jeofails.

All the Statutes of Jeofails shall extend to Judgments, to be Entered by Confession,

Nil

Nil dicit, or *Non sum Informatus*, in any Court of Record; and no such Judgment shall be reversed, nor Writ of Inquiry of Damages thereon be stayed or reversed, by reason of any Matter which would have been aided by any Statute of Jeofails in case of a Verdict, so as an original Writ or Bill, and Warrant of Attorney be filed.

Provided that the Plaintiff's Attorney file his Warrant the Term he declares, and the Defendant's Attorney the Term he appears, under the Penalties inflicted by former Laws for Defaults in such Cases. *Warrants of Attorney. Post.*

Any Defendant or Tenant in any Action or Suit, or any Plaintiff in Replevin in any Court of Record, with Leave, may plead as many several Matters as are necessary. But if any such Matter on Demurrer be judged insufficient, Costs shall be given at the Discretion of the Court; or if a Verdict be found on any such Issue for the Plaintiff or Demandant, Costs shall be given in like Manner, unless the Judge certify that the Defendant, Tenant, or Plaintiff in Replevin, had a probable Cause to plead it. *Pleadings, insufficient, &c. Costs.*

Venires out of Courts of Record at *Westminster*, shall be awarded of the Body of the County where the Issue is triable: Provided that nothing before mentioned extend to Appeals of Felony, &c. or any Process on them, or to any Writ, Bill, or Information, on any penal Statute. *Venires.*

The Courts at *Westminster* may order special Writs of *Distringas*, or *Habeas Corpora*, to cause Six or more of the first twelve Jurors, to have Matters in Question shewn to their *Jury to have View, &c. 1 Mod. 41.*

their View, by two Persons in the Writs named, appointed by the Court; and the Sheriff shall return the View.

Attornment.
1 Lev. 40.

All Conveyances of Manors, Rents, Reversions or Remainders of Messuages, or Lands, shall be good, without Attornment of the particular Tenants thereof. But Notice must be given to Tenants; and no such Tenant shall be prejudiced by Payment of Rent, or Breach of Condition for Non-payment, before Notice.

Dilatory Pleas.

No dilatory Plea shall be received in any Court of Record, unless the Truth thereof be proved by Affidavit, or some probable Matter be shewn.

*Payments
pleaded on
Bonds, &c.*

In Debt, on single Bill, Debt, or *Sci. Fa.* brought upon a Judgment, the Defendant may plead Payment in Bar: In Debt upon Bond, if the Defendant before Action brought hath paid the Principal and Interest due by the Defeasance, or Condition, he may plead Payment in Bar: And pending an Action on such Bond, the Defendant may bring in the Principal, Interest, and Costs in Law and Equity; and then the Court shall give Judgment to discharge the Defendant.

Witnesses.

Witnesses that are good Witnesses at Trials at Common Law, shall be deemed good Witnesses to prove a Nuncupative Will, or any Thing relating thereunto.

*Uses, Trusts,
Claims, &c.
on Fines.*

Declarations of Uses, &c. by Deed, made after Fines and Recoveries, shall be good in Law, notwithstanding 29 Car. 2. c. 3. concerning Frauds and Perjuries. No Claim or Entry shall avoid any Fine with Proclamations in C. B. &c. or shall be a sufficient Claim

or

or Entry within 21 *Jac. 1. c. 16.* for Limitation of Actions, unless an Action be brought in one Year after such Entry or Claim, and prosecuted with Effect.

All Suits in the Admiralty for Seamen's Wages, shall be commenced in six Years, after the Cause of Action: Proviso, if the Person intituled to such Suit, be a Minor, Feme Covert, *Non Compos*, Imprison'd, or beyond Sea, then such Person is to bring the Action within six Years after full Age, Discoverture, sane Memory, at Liberty and Return.

Suits in the Admiralty. 6 Mod. 26.

If any Person against whom Cause of Action for Seamen's Wages, or for Trespas, Detinue, Trover, Replevin, Account, Case or Debt grounded on Contract, or Lending, or for Rent, shall at the Time of such Cause of Suit accrued be beyond the Seas, then the Person intituled to such Suit, may bring an Action after the Return of such Person, within such Time after the Return, as is limited by this Act, and the 21 *Jac. 1. c. 16.*

Actions saved to Persons beyond Sea, &c.

The Sheriff or other Officer, taking Bail at the Suit of a common Person Plaintiff, shall at the Request of such Plaintiff, or his Attorney, assign to the Plaintiff the Bail-Bond, or other Security taken, by Endorsing the same in the Presence of two Witnesses, under his Hand and Seal without Stamp; provided it be stamp'd before Action brought; and if forfeited, an Action may be commenc'd in the Plaintiff's own Name; and the Court where the Action is brought, may give such Relief thereon (by Rule of Court) as is agreeable to Reason.

Bail-Bonds.

Warranties
void. Co. Lit.
371 to 375.

Warranties made for Life, descending on him in the Reversion or Remainder ; and all collateral Warranties by any Ancestor, who has no Estate of Inheritance in Possession in the same, shall be void against the Heir.

Subpœna's,
Bills to be
filed.

No *Subpœna*, or Process, shall issue out of any Court of Equity, 'till a Bill be filed, (except Injunctions to stay Waste, or Suits commenced at Law) and a Certificate thereof brought to the *Subpœna* Office, under the Hand of the Six Clerk.

Bills dismiss'd.

Upon Dismission of a Bill, the Plaintiff shall pay full Costs, to be taxed by a Master: And no Copy, Abstract, &c. of any Bill is to go with the *Dedimus* or Commission, but in lieu thereof the sworn Clerks in Chancery are to take the Term-Fee of 3 s. 4 d. and the whole Fee of all small Writs made by them.

Jeofails.

This Act, and all the Statutes of Jeofails, shall extend to all Suits in the Courts of Record at *Westminster*, for Recovery of Debts immediately owing, or Revenue belonging to the Crown, and to all Courts of Record in this Kingdom.

Writs of Er-
ror.

Upon Quashing Writs of Error, for Variance from the Record or other Defect, the Defendant shall recover his Costs against the Plaintiff, as if Judgment had been affirmed.

Wages in the
King's Yards,
&c.

The Salary, Wages, &c. due to Persons for Work done in any of the Royal Yards or Docks, shall not be deemed *Bona Notabilia*, whereby the Prerogative Court shall have Jurisdiction to grant the Probate of Wills, or Letters of Administratoin, which is declared to be in the Ordinary of the Diocese, &c.

Actions

ACTIONS of Account may be brought against Executors and Administrators of Guardians, Bailiffs, and Receivers; and by one Joint-Tenant and Tenant in Common, his Executors and Administrators, against the other; and the Executor and Administrator of such Joint-Tenant or Tenant in Common: And the Auditors appointed by the Court, shall examine the Parties concerning the Matters in Question upon Oath, and shall be allow'd what the Court shall think reasonable for their Pains, by the Party on whose side the Ballance shall appear on the Account.

ACTIONS of Account.
Vide 1 Danv.
217, 218.

The Act of 4 Geo. 2. c. 26. *That all Proceedings in Courts of Justice, &c. shall be in the English Language*, recites, *Whereas many and great Mischiefs do frequently happen to the Subjects of this Kingdom, from the Proceedings in Courts of Justice being in an unknown Language, those who are summoned and impleaded having no Knowledge or Understanding of what is alledged for or against them in the Pleadings of their Lawyers and Attornies, who use a Character not legible to any but Persons practising the Law: To remedy these great Mischiefs, and to protect the Lives and Fortunes of the Subjects of that Part of Great Britain called England, more effectually than heretofore, from the Peril of being ensnared or brought in Danger by Forms and Proceedings in Courts of Justice in an unknown Language.* 'Tis Enacted,

St. 4 Geo. 2. c. 26. That Proceedings in Courts of Justice be in English. (See the Preface to the English Lawyer.)

(1.) That after 25 Mar. 1733. All Writs, Process, and Returns thereof, and Proceedings thereon; and all Pleadings, Rules, Orders, Indictments, Informations, Inquisitions, Pre-

The Practising Attorney:

Presentments, Verdicts, Prohibitions, Certificates: And all Patents, Charters, Pardons, Commissions, Records, Judgments, Statutes, Recognizances, Bonds, Rolls, Entries, Fines and Recoveries, and all Proceedings relating thereunto; and all Proceedings of Courts-Leet, Courts-Baron and Customary Courts: And all Copies thereof; and all Proceedings whatsoever in that Part of *Great Britain* call'd *England*, and in the Court of Exchequer in *Scotland*; and which concerns the Law and the Administration of Justice, shall be in the *English* Tongue and Language only, and not in *Latin*, or *French*, or any other Tongue or Language; and shall be written in such a common legible Hand and Character, as the Acts of Parliament are usually engrossed in; and the Lines and Words of the same to be written at least as close as the said Acts usually are, and not in any Hand commonly called *Court-hand*, and in Words at length and not abbreviated; any Law, &c. heretofore used to the contrary notwithstanding: And all and every Persons offending against this Act, shall for every such Offence forfeit and pay the Sum of 50*l.* to any Persons who shall sue for the same by Action of Debt, Bill, Plaint, or Information in any Court in *Westminster-hall*, or Exchequer in *Scotland*. Wherein no Effoin, Protection or Wager of Law, nor more than one Imparlance shall be allowed.

*And be written in Words at Length, and not in Court-hand, &c. on Penalty of 5*l.**

Mis-translation, &c. before 25 Mar. 33 a mendable, &c.

(2.) And further, &c. That Mis-translation, Variation in Form by reason of Translation, Mis-spelling, or Mistake in Clerk-

Clerkship *, or Pleadings, or Proceedings, begun or to be begun before the said 25 Mar. 1733. being Part in *Latin* and Part in *English*, shall be no Error, nor make void any Proceedings by reason thereof: But that all manner of Mis-translation, Errors in Form, Mis-spellings, Mistakes in Clerkship may at any time be amended, whether in Paper or on Record, or otherwise, before or after Judgment, upon Payment of reasonable Cost only.

(3.) *Provided*, Nothing in this Act shall extend to the certifying beyond the Seas any Case or Proceedings in the Court of *Admiralty*: But that in such Cases the Commissions and Proceedings may be certified in *Latin* as formerly.

Not to extend to the certifying Proceedings in the Admiralty.

(4.) And whereas several good Laws had been made to prevent Delays in Actions, &c. by reason of subtile, ignorant, or defective Pleading, or Defects in Form, called *Jeofails*, &c. Enacted, That all the Statutes for reforming and amending the Delays arising from any *Jeofails* whatsoever, shall extend to all and every Form and Forms, and to all Proceedings in Courts of Justice, (except in criminal Cases) when the Forms and Proceedings are in *English*. And that all and every Error and Mistake whatsoever, which would or might be amended and remedied by any Statute of *Jeofails*, if the Proceedings had been in *Latin*, all such Errors, and Mistakes of the same and like Nature, when the

Statutes for reforming Delays by Jeofails to be extended to Proceedings in English.

* Note; Here seems to have been accidentally omitted (in any Declaration.

The Practising Attorney:

Forms are in *English* shall be deemed, and are hereby declared to be amended and remedied by the Statutes now in Force for the Amendment of any *Jeofails*. And this Clause shall be taken and construed in all Courts of Justice in the most ample and beneficial Manner, for the Ease and Benefit of the Parties; and to prevent frivolous and vexatious Delays.

Having thus gone through the several *Statutes concerning the Practice of the Law*, we shall now proceed to the respective COURTS, and the particular *Practice* of an Attorney in *B. R.* and *C. B.*

Of the COURTS of KING's BENCH, and COMMON PLEAS, and their Rules and Orders.

The KING's BENCH.

*Authority of
the Court of
B. R.*

THE Court of *King's Bench* is so call'd, from the Presence of the King, the Kings of *England* having in Times past sat on the Bench; but the Judicature always belong'd to the Judges; and it was formerly moveable with the King. When the King sat in this Court in Person, its Authority was much greater than now, tho' it still retains a very extensive Power in the Distribution of Justice, both Civil and Criminal. Its Jurisdiction

dition therein extending all over *England*, and is accordingly divided into a *Crown-side*, and a *Plea-side*. The *Crown-side* determines all criminal Matters, (wherein the King is Plaintiff) as Treasons, Felonies, Murders, Rapes, Robberies, Riots, Breaches of the Peace, and all Causes prosecuted by way of Indictment, Inquisition or Information. And into the Court of *King's Bench*, Indictments from all inferior Courts, and Orders of Sessions, &c. may be removed by *Certiorari*; and Inquisitions of Murder, &c. are certified hither of Course.

The *Plea-side* holds Plea of all personal Actions prosecuted by Bill or Writ, as Actions of Debt, Detinue, Covenant, Account, and of all Actions of the Case, either upon Promises, Nuisances, Torts, Trover and Conversion, scandalous Words, or on penal Statutes, and all other personal Actions, Ejectment, Replevin, Trespass, Waste, &c. against any Person in the Custody of the Marshal of the Court, as every one sued here is supposed to be: And of all personal Actions for or against any Officer, Minister, or Clerk of the Court.

This Court may examine and correct the Errors of *C. B.* and other inferior Judges or Justices; it can reverse a Judgment given in the *King's Bench* in *Ireland*: It may repeal the King's Letters Patent by *Scire fac.* &c. It granteth an *Habeas Corpus* upon Motion to relieve Persons wrongfully imprison'd, restores Freemen unjustly disfranchis'd, may bail any Person whatsoever, where bailable by Law, &c. The Chief Justice of this Court is constituted

27 *El.* c. 8.

4 *Inst.* 74,

75.

stituted by Writ, and the rest by Patent; but their Authority, when constituted, is Original and Ordinary; for when the King hath appointed them, they have their Jurisdiction from the Law, in all Causes both Criminal and Civil.

Officers of the
King's
Bench.

The subordinate Officers of this Court are, on the *Crown-side*, the Clerk of the Crown, and the Secondary of the Crown, with eight Under-Clerks, who attend in the Crown-Office, and act as Attornies for the Dispatch of Business. On the *Plea-side*, there is a Chief Clerk or Prothonotary, and his Secondary or Deputy; also the *Custos Brevium*, two Clerks of the Papers, the Clerk of the Declarations, the Signer and Sealer of Bills, the Clerk of the Rules, Clerk of the Errors, Clerk of the Bails, Philizers, the Marshal of the Court and the Crier, &c.

Prothonotary.

Secondary.

Deputy Stamp-
er.

*Custos Brevi-
um*, or Keeper
of the Writs.

All these Officers on the *Plea-side*, have their several Businesses and Employments as follow: The *Prothonotary* or Master of the *King's Bench* Office, and his Clerks are the proper Attornies here, who enter all Declarations, Pleas, and other Proceedings. His *Secondary* constantly attends the Sitting of the Court, to receive Matters referred to him by the Judges, to be examined and reported to the Court; he signs all Judgments, taxes Costs, and gives Rules to answer, reply, &c. and he also informs the Court in Points of Practice.

The *Deputy* keeps the Stamp for signing all Writs, &c. and he keeps Remembrances of all Records: All Writs return'd, *Postea*, Writs of Error, and common or special Bails, &c. are filed in his Office. The *Custos Bre-*

vium files all Originals, and other Writs whereon you proceed to Outlawry: Examines and seals all Records of *Nisi prius* for Trials at the Assizes, and has several Clerks under him for making up Records throughout *England*. The Clerks of the Papers make up the Paper-Books of all special Pleadings and Demurrers, which the Plaintiff's Attorney most commonly speaks for, and afterwards gives Rule for the Defendant's Attorney to bring to him again to be entred, in four Days, or Judgment to go by Default. The Clerk of the Declarations files all Declarations after they are ingross'd, and continues them on the Back from the Term you declare, 'till Issue is join'd. The Signer and Sealer of Bills keeps a Book of Entry of the Names of the Plaintiffs and Defendants in all such Writs, and the Defendants enter their Appearances with him. The Clerk of the Rules takes Notice of all Rules and Orders made in Court, and afterwards draws them up, and enters them in a Book at large: And he or the Clerk of the Papers files all Affidavits used in Court, and makes Copies of them at 4*d.* per Sheet; and with him are given all Rules of Course, as on a *Capi Corpus*, *Habeas Corpus*, for *Procedendo's*, *Postea's*, Writs of Enquiry, &c. The Clerk of the Errors allows all Writs of Error, and makes *Supersedeas* thereupon into any County; he likewise makes the Transcript of Records to be carried into the Exchequer-Chamber, &c. The Clerks of the Bails and *Postea's* file the Bail-Pieces and mark the *Postea's*, &c. and attend in the Office of *B. R.* for that Purpose. The Philizers

Clerks of the Papers.

Clerk of the Declarations.

Signer of Bills, &c.

Clerk of the Rules.

Clerk of the Errors.

Clerks of the Bails, &c.

Philizers.

The Practising Attorney:

are one for each County, who make the mean Proceſs after the Original in Suing to the Outlawry; and have the Benefit of all Proceſs and Entries thereupon.

Marſhal.

Cryer.

Tipſtaves.

The *Marſhal* of the *King's Bench*, by himſelf or Deputy, always attends the Court, to receive into his Cuſtody ſuch Priſoners as ſhall be committed. The *Cryer* makes Proclamations of Summoning and Adjourning the Court, calls Nonſuits, and ſwears Jurymen, Witneſſes, &c. There are alſo four Tipſtaves *i. e.* one belonging to each Judge, &c.

The COMMON PLEAS.

*Authority of
the Court of
C. B.*

THE Court of Common Pleas (otherwiſe call'd Common Bench) is the King's Court held at a Place certain, *viz. Weſtminſter-Hall*. The Jurisdiction of this Court in civil Caſes is general, and extends it ſelf throughout all *England*. It holds Plea of all Civil Cauſes at Common Law, between Subject and Subject, in Actions Real, Perſonal, and Mixt: Real Actions, ſuch as concern Inheritances, by which Fines and Recoveries paſs, and all others by Original Writ; Perſonal Actions, of Things tranſitory, as for Money, Goods, Chattels Perſonal, &c. Mixt Actions, partaking of the Nature of both, as *Ejectione firmæ*, *Quare Impedit*, *Waste*, wherein is recovered not only the Land or Parſonage, but likewise Damages for Detainer, Diſturbance in Preſentation, &c. Actions Popular, as *Decies tantum*, Champerty, Maintenance, &c. are alſo cognizable by this Court; and Actions Penal, as Actions of Debt,

Debt, &c. upon any Statute, which gives a Penalty for the Breach thereof, to those who will sue for the same. And regularly this Court cannot hold any Plea in Actions Real, Personal, or Mixt, but by Writ out of Chancery returnable in this Court; unless it be by Bill, for or against an Officer or other privileged Person of the Court; for Prohibitions to keep Courts within due Bounds, &c. *wide post.*

In Personal and Mixt Actions, this Court and B. R. have now for the most part a concurrent Jurisdiction*: But none are admitted to plead at the Bar, or to sign any Special Pleadings in this Court, but Serjeants at Law. And this Court hath no Cognizance of Pleas of the Crown. Nor had B. R. originally of Civil Actions between Subjects, except Breaches of the Peace, or where the Defendant was *in custod. Mar'*.

* *Tho' not so originally.*

Clerks and Officers of C. B.

THE Clerks and Officers of this Court, are the *Custos Brevium*, three Prothonotaries, and their Secondaries, the Clerk of the Warrants, Clerk of the Effoins, fourteen Filazers, four Exigenters, Clerk of the Juries, the Chirographer, Clerk of the King's Silver, the Clerk of the Treasury, Clerk of the Seal, of Outlawries, and the Clerk of the Inrollments of Fines and Recoveries.

Officers of the Common Pleas.

The *Custos Brevium* is the Chief Clerk in this Court; he receives and keeps all Writs returnable here, filing each Return by it self, and at the End of every Term, receives from

Custos Brevium, or Keeper of the Writs.

3. *Prothonotaries.*

3. *Secondaries.*

Clerk of the Warrants.

Clerk of the Effoins.

the *Prothonotaries* all the Records of *Nisi prius*, or *Postea's*, (brought by the Clerks of the Assize of every Circuit, &c.) And the Clerk of the Judgments delivers to the *Custos Brevium*, all Records of *Nisi prius* at the End of every Term, who files the Rolls together, and carries them into the Treasury of Records. He also enters the Writs of Covenant and Concords of all Fines, and makes out Exemplifications, and Copies of all Writs and Records, &c. The *Prothonotaries* enter and inroll all Declarations, Pleadings, Affidavits, and Judgments, and all other Entries of the Clerks and Attornies belonging to their Offices: They make out all Judicial Writs, *Venire facias's*, and *Habeas Corpus*, Writs of Execution, and Seisin, Writs of Privilege to remove Causes, *Procedendo's*, *Scire facias's*, Writs of Inquiry of Damages, *Audita Querela's*, Process upon Prohibitions, and false Judgments; and they inroll all Recognizances acknowledged in this Court, and all Common Recoveries. The *Secondaries* are Assistants to the *Prothonotaries* in the Execution of their Offices. The *Clerk of the Warrants* enters all Warrants of Attorney, and Deeds of Bargain and Sale acknowledg'd in Court, or before any Judge thereof; and estreats into the *Exchequer* all Issues, Fines and Amerciaments, which grow due to the Crown in this Court. The *Clerk of the Effoins* keeps the Roll of the Effoins, wherein he Enters them, and exemplifies Nonsuits and Effoins; for which certain Fees are appointed: And he also provides Parchment and cuts it into Rolls, marking the Numbers thereon,

thereon, which he delivers out and receives again after they are written, and makes them up in Bundles or Files each Term. The *Filazers* make out all Mesne Proceſſes between the Original Writ and the Declaration: And where the Defendant is summoned or reſummoned, they iſſue out Diſtreſſ infinite 'till Appearance: They make out all Writs of View, and Writs of *Superſedeas*, where the Defendant appears in their Office after a *Capias* awarded. They may alſo enter Impar- lances, or general Iſſues, the Appearance being entered with them; and Judgments by Confefſion thereupon, before Iſſue join'd, and Writs of Execution on the ſame. The *Exigenters* make out all Exigents and Proclamations, in order to Outlawry; and have for every common Exigent 1 s. and for every ordinary Proclamation 6 d. The *Clerk of the Juries* makes out all *Habeas Corpora Juratorum*, for Summoning Juries, after the Sheriff has return'd the Panel on the *Venire*; and he makes all Continuances 'till the Verdict given. The *Chirographer* ingroſſeth all Fines upon Writs of Covenant, and makes Records thereof; he likewiſe delivers Indentures of them to the Parties, and the Foot of the Fines to the *Cuſtos Brevium*: And he proclaims all the Fines in Court every Term, according to the Statute. The *Clerk of the King's Silver* enters in a Paper-Book the Subſtance of the Writ of Covenant on Fines, purſuant to which Notes all the Fines are entered upon Record in the Rolls of the Court. The *Clerk of the Treafury* has the Keeping of the Records of the Court; and makes

*Clerk of the
Seal.*

*Clerk of the
Outlawries.*

*Clerk of the
Inrollments.*

*Clerk of the
Errors.*

makes up and seals all Records of *Nisi prius*; he certifies all Records into *B. R.* on Writs of Error, &c. he makes Exemplifications of Records lodg'd in the Treasury, and all Copies of Issues, Imparlanes, and Judgments, and of all Informations, &c. The *Clerk of the Seal* seals all Writs, and Mesne Process made by the *Filazers*; also Writs of Outlawry, and *Supersedeas*, and all Patents or Exemplifications. The *Clerk of the Outlawries* is Servant to the Attorney General, for making out the *Capias utlagatum* after Outlawry, and the Attorney General's Name is to every one of these Writs. The *Clerk of the Inrollments* of Fines and Recoveries, returns all Writs of Covenant upon Fines, as also all Writs of Entry, Summons and Seisin upon common Recoveries; he also inrolls, and exemplifies all Fines and Recoveries, &c.

These are the several Officers and Offices of the Court of *Common Pleas*; to which we may add a *Clerk of the Errors*, for the Allowance of Writs of Error, and certifying the Records thereon into *B. R.* &c.

ORDERS and RULES of the Common Law Courts.

The Rules and Orders of B. R.

*Trin. 13.
Car. 2.*

EVERY Attorney who puts in *Bail* by *Recognizance* before a Judge, (if the Plaintiff accept it) shall cause the said *Bail* to be
filed

filed within 20 Days, under the Penalty of 40 s.

Clerks and Attornies of the Court upon Notice, are to attend Motions under the Penalty of 10 s. Pasch. 14.
Car. 2.

In every Action of *Ejectio firmae*, where the Lands lie in the County of *Middlesex*, the Plaintiff's Attorney is to sue forth a Bill of *Middlesex*; Or if the Lands lie out of the County of *Middlesex*, a Latitat against the casual Ejector; and file common Bail, before the Declaration is delivered to the Tenant in Possession. Trin. 14.
Car. 2.

All Attornies of this Court are to appear in Court in proper Person, on or before the 14th Day of the Term of *St. Michael*, and on or before the 7th Day of every other Term, under the Penalty of 10 s. for the first Default, and 20 s. for the second Default. And every Attorney is to enter his Pleadings, &c. within three Days after the End of each Term. And no Rule is to be made by a Judge in any Cause *post tertium diem prox.* after the End of every Term. Trin. 14.
Car. 2.

Every Sheriff shall enter on Record a sufficient Deputy to receive all Writs and Process. And the said Sheriffs or their Deputies are to give their Personal Attendance in *Westminster-Hall* daily in Term-Time. No Sheriff shall make or deliver out any Warrant, before the Writ be duly sued forth and delivered to the said Sheriff: Nor shall the Sheriffs deliver any Blank Warrants, upon Pain of severe Punishment, and Fine; and Expulsion of Clerks or Attornies procuring them. Hil. 14 &
15 Car. 2.

Keepers

Pasch. 15
Car. 2. &c.

Keepers of the Seal appointed for *Sealing* of *Writs* issuing out of *B. R.* are not to put the Seal to any *Writ* of *Latitat*, *Habeas Corpus*, (have the Body) *Scire facias*, (cause to know) &c. before signed with the Sign of the Court.

See 6 Mod.
85, 86.

No *Bailiff* nor Sheriff's Officer shall exact or take from any Person in Custody by Arrest, any Warrant to acknowledge a Judgment but in Presence of the Defendant's Attorney, who shall subscribe his Name thereto.

Attornies are to attend the Master upon References, on Pain of forfeiting 10 s.— And *Clerks* of the Office are to account with the Secondary within a certain Time after every Term, not exceeding 10 Days, on Pain of Suspension and Expulsion.

Trin. 15.
Car. 2.

Records of *Nisi prius* are not to be sealed after the End of one Month next after any Term.

Mich. 15
Car. 2.

Additions to be inserted in Affidavits, &c. of the true Place of Habitation and Callings, &c. of every Person.

4 Mod. 301.

No *Writ* to be issued out with an *Acetiam*, &c. against any Heir or Executor, nor in any Case where Special Bail is not required. And a Defendant lawfully delivered from an Arrest, shall not be arrested again at the same Time at the Suit of the same Plaintiff.

Pasch. 16.
Car. 2.

Attornies offending herein to be expunged out of the Roll, and otherwise punished.

Attornies who would discharge a Prisoner for Defect of Prosecution, are to give the Plaintiff or his Attorney Notice to appear before a Judge, and shew Cause why he should not be discharged: And if the Plaintiff

tiff do not appear, and shew such Cause on Affidavit made of the Notice, the Prisoner shall be released.

Clerks of the Errors in the Exchequer, to allow Writs of Error within four Days after Notice given to the Plaintiff's Attorney; and Bail is to be put in on Writs of Error within 4 Days after their Allowance, or Execution shall be made out. *Post Trin. & Mich. 5 W. & M.*

No Attorney or Clerk in Court shall deliver or accept of any Plea, &c. which ought to be put into the Office of the Clerk of the Papers, before it be put into the Office, and the Copy thereof signed by the Clerk of the Papers, &c. under the Penalty of 10 s. for the first Offence; 20 s. for the second; and for the third Offence Expulsion. *Trin. 16 Car. 2.*

Attornies appearing for Defendants in Actions where Special Bail is not required, shall file Common Bail within six Days after the End of the Term they appear'd. After 20 Days Notice given of putting in Special Bail before a Judge, on a Capi Corpus, if no Challenge be made, the Bail shall be filed in four Days. On a Habeas Corpus twenty-eight Days are allow'd, for Exception to the Bail. *Mich. 16 Car. 2.*

Clerks of the Papers are to receive no Special Pleas or Demurrers, before they are sign'd by Counsel. *Pasch. 18 Car. 2.*

General Rules to answer, in Ejectment, are to be entered before any Motion be made for Judgment against the Casual Ejector.

No Defendant shall put in Bail for a greater Sum than expressed in the Process. And *Trin. 22 Car. 2.*
if 6 Mod. 266, 7.

The Practising Attorney:

if the Plaintiff declares for more, the Bail shall not be liable.

Ann. 28
Car. 2.

The *Marshal* of *B. R.* shall not suffer any Person in Custody, or within the Rules, to go out thereof but by special Rule of Court.

Pasch. 29
Car. 2.

No *Bail* is to be put in upon a *Habeas Corpus*, before the Writ is returned. And the Attorney that puts in Bail before a Judge, is to pay for filing, if it be on a *Hab. Corp.* 4 s. 10 d. If on a *Cep. Corp.* 2 s. 6 d.

Anno 31
Car. 2.

All *Writs* and *Proceses* on Originals, &c. must be signed by the *Filazers* of this Court.

Pasch. 33
Car. 2.
36 *Car.* 2.

Ten Days Notice is to be given of *Arguing Error* in the Exchequer: And Copies of the Error to be delivered to the Justices of *C. B.* and Barons of the Exchequer 4 Days before Hearing.

Pasch. &
Hill. 2
Fac. 2.

Upon *Arguing Demurrers*, Special Verdicts, and Writs of Error, Books to be delivered to the Judges by the Attornies on both Sides 4 Days before. And Exceptions to be marked in the Margin. Every Defendant not being Executor or Administrator, to put in *Special Bail* upon *Hab. Corp.* to remove a Cause from an inferior Court.

See 6 *Mod.*
242.
Hill. 3 & 4
Fac. 2.

None to be admitted in *Forma pauperis* out of Court. *Warrants of Attorney* to be entred upon the Roll, at the Beginning of every Cause, for Plaintiff and Defendant, otherwise the Roll not to be filed.

1 *W. & M.*
ant.

On every *Judgment* acknowledg'd by Warrant of Attorney, Bail is to be filed, to warrant the Judgment, &c.

Pasch. 5
W. & M.

Rules for delivering *Declarations to Prisoners*, in Custody, after the Return of the *Proceses*.

cess. No Rule to be granted to appear and plead, 'till after Oath made of Delivering the Declaration, and Filing the same: And Judgment to be signed if the Defendant does not appear within a certain Time, &c.

Upon a *voluntary Appearance*, the Plaintiff's Attorney is to prosecute a *Latitat* or Bill of *Middlesex* in 14 Days. In *Error* Notice to be given of *Bail* put in, and if the *Bail* be not excepted against within 20 Days, then to be allow'd.

When the Attorney on either Side doth not appear before the Secondary to name the *Jury* for a *Trial at Bar*, the Secondary upon Reference to him is to return and name 48 sufficient Jurors, out of which a Jury of 12 is to be chosen to try the Cause. No *Alias Sci. Fac.* is to issue forth until the first is returnable.

No Roll shall be filed without License, after the subsequent Term wherein it ought to be done. The Clerks are to bring in their *Rolls* after every Term, within a certain Time, or they shall not be received.

Common *Bail* may be filed for a *Prisoner* after Judgment, not charged in Execution before the End of the second Term following, on giving Notice to the Plaintiff's Attorney.

The Defendant's Attorney may enter the Plaintiff's Demurrer upon Record, when the Plaintiff's Attorney neglects it. Copies of *Declarations*, *general Issues*, *Demurrers*, &c. to be delivered to the Defendant's Attorney, who is to pay 4 d. per Sheet, &c.

Where

Trin. & Mich. 3 W. & M.

Trin. 8 W. 3. See 6 Mod. 123. 2 Sal. 649, 651.

Trin. 9 W. 3.

Pasch. & Trin. 11, 12 W. 3. Vide post.

Trin. 1 Anna.
6 Mod. 132.

Where *Bail* are impleaded upon their Recognition, they shall have 8 Days in Term-Time after the Return of the Writ against such Bail, to deliver the *Defendant's Body* into Custody in their *Discharge*. Notice is to be given the Plaintiff's Attorney of the Defendant's Rendering himself in Discharge of the Bail, and Oath to be made of it, &c.

Pasch. 5
Anna.

No Special *Impar lance* shall be allow'd without Leave of the Court.

Mich. 5.
Anna.

Where a Person is *arrested* upon any Writ returnable *Ante tres Septimanas Paschæ, vel Mens. Michaelis, &c.* if the Defendant appears and puts in Bail, and the Plaintiff declares before the *Essoin-Days* of those Terms, then the Defendant is to *plead* the same Term, or Judgment shall be entred by Default; but if the Declaration be not deliver'd 'till after the *Essoin-Days*, the Defendant hath Time to plead 'till two Days before the *Essoin-Day* of the subsequent Term, so as to enter.

Mich. 3 Anna.

All *Attornies and Clerks* are to procure themselves to be admitted of some of the *Inns of Court*, and take Chambers or Lodgings near; and none shall be sworn an Attorney, &c. unless he be so admitted. And none is to put himself out of the first Society until he be admitted into some other. Attornies are likewise to come into and continue in Commons, or they shall be put out of the Roll.

Mich. 1706.

Judgments, or Incipiturs thereof, to be enter'd on the Roll before their Signing: And Names of the Parties, with the Nature of the Action, &c. to be also entred by the Secondary,

condary. No Record of *Nisi prius* to be seal'd, before the Issue, or an *Incipitur*, be entred on Record, and sign'd, &c.

The Defendant in any Action to be tried *Mich. 4 Ann.* in *London* or *Middlesex*, having entred *Ne Recipiatur*, the Plaintiff to proceed to Trial the next Sessions.

Where a Defendant is in Custody of the Marshal of this Court, on Process, &c. two *Trin. 2 Geo.* Terms, without the Plaintiff's Declaring, he shall be discharged on filing Common Bail: And the Plaintiff having declared, but not proceeding in Three Terms after, the Defendant may file Common Bail, or have Writ of *Superfedeas*.

A Plaintiff concluding *ad P'rium*, on the Plea of the Defendant, and Notice given of Trial in the Paper-Book, if the Defendant demurs, and the Plaintiff joins, and obtains Judgment, the Defendant's Attorney to accept of Notice of executing Writ of Enquiry of Damages from the Time of Notice of Trial. *Pas. 6 Geo.*

That all Records of *Nisi prius* in *London* and *Middlesex*, be sealed on or before the respective Days appointed (by the Lord Chief Justice) in the Sittings Paper for their Trial. *Pas. 7 Geo.*

No Attorney or other Person shall be Summon'd to attend any Judge of this Court, nor any Matters be transacted before such Judge at his Chambers, or elsewhere out of Court, during the Sitting of this Court at *Westminster*; and all Orders and other Transactions so to be made by such Judge, shall be vacated. *Mich. 11 Geo.*

See

The Practising Attorney:

See ——— before the Orders of B. R. and C. B. i Geo. 2. on the Act for preventing frivolous and vexatious Arrests.

The Rules and Orders of C. B.

Mic. 1654.

Attornies are to be admitted into *Inns of Court*, or *Chancery*; and be in *Commons* one Week in every Term, &c. And all Officers and Attornies are to appear in Court on or before the 14th Day of *Michaelmas* Term, and the 7th Day of every other Term, under Penalties. *Vide ante, pa. 73.*

No Attorney to be admitted unless he has practised as a Solicitor for 5 Years, or served a Clerkship to a Judge, Serjeant, Counsellor, Attorney, &c. And no Person is to practise in another's Name, upon Pain of such other's being put out of the Roll.

Term ibid.

Sheriffs are to have their Deputies in Court, to return and receive Writs; who are to appear in the Term; but no Under-Sheriff is to practise as an Attorney. Sheriffs, *Bailiffs*, &c. not executing of Process, or taking undue Fees, giving the Defendant Notice, &c. are to be punished by Fine and Commitment. And no Warrant of Arrest to be granted, before a Writ first come to the Sheriff.

Term ibid.

A Jury of Clerks and Attornies once in three Years to be impanell'd and sworn to enquire of Abuses, Extortions, &c. of Attornies: And 12 Practisers to be nominated every Year, to examine such as would be Attornies, inform the Court of Breach of Orders, &c.

Rolls

Rolls to be deliver'd to be entred, to Clerks or Entring Attornies: *Prothonotaries* to sign Executions, and all other Writs. Causes are to be proceeded on in the same Office, where begun: And Rolls of every Term are to be brought to the Prothonotary fairly entred, and docketted, before the succeeding Terms, &c. under the Penalty of 10 s.

Actions upon the *Case*, *Trespass*, *Assault*, *Term* *ibid.* &c. to be laid in their proper Counties. Bonds to be given for *Appearance*, unless the Plaintiff consent to take Appearance without Bail; Persons taken upon *Outlawries*, are not to be discharged without *Supersedeas*. A *Habeas Corpus cum Causa*, &c. not to be returnable *immediate*, unless directed to the Sheriff of *London* or *Middlesex*: Upon a *Habeas Corpus* or *Cepi Corpus*, where special Bail is required, the Bail not to be taken without Consent of the Plaintiff. Writs of *Habeas Corpus* directed to the inferior Courts of *London* and *Westminster*, &c. are returnable *immediate*, and the Defendant may be bailed, giving Notice of the Names of the Bail, and when and before what Judge he intends to put it in; but it must be in eight Days, or a *Procedendo* may be granted, and Exception must be taken within 20 Days after Notice.

In all Causes of Removal, *Special Bail* *Term* *ibid.* ought to be given; and on a *Cepi Corpus* for Debt, Detinue, *Trespass*, &c. where the Debt or Damages amount to 20 l. In Covenant, Bail to be given at Discretion: In Battery, Conspiracy, &c. no special Bail to be given, without Order of Court. In Slander,

no Special Bail, but to be at Discretion of the Judges. The Principal rendering himself before the Day of Appearance of the *Sci. fac.* &c. or the Return of the Process against the Bail, no further Proceedings shall be had against the Bail.

Term *ibid.*

Appearances are to be duly entered; and Attornies undertaking Appearances, are liable to an Attachment, or to be put out of the Roll, if they do not appear. No Person is to change his Attorney, without Rule of Court, &c. Plaintiffs in Special Actions, have Liberty to enter *Imparlances* the Term following. If the Defendant appear the first Term, and give no Rule to declare, his Attorney the second Term may be compelled to accept of a Declaration with *Imparlance*: But if the Plaintiff declare not the second Term, though the Defendant give no Rule, a Nonsuit may be entered at the End of the second Term, upon a Continuance entered by *Dies Datus*. If the Day to appear be upon the first Return of any Hilary or Trinity Term, no *Imparlance* will be granted without Consent or Rule of Court.

Term *ibid.*

No *Judgment* by *nihil dicit* to be entered until Rule be given to *plead* and the Day past. After Rules to declare are out, no Nonsuit to be entered for Want of a *Declaration*, unless the Plaintiff's Attorney be first call'd to for a Declaration. The Plaintiff having declar'd and given *Rules for Answer*, the Defendant is to deliver his *Plea* to the Plaintiff's Attorney; and if he be not to be found, or refuseth it, it is to be left in the Office, to save a Judgment. After *Imparlance*

lance of three Terms, without calling for Answer, no Judgment is to be entered without a Term's Notice.

The Nature of the Action, in Actions of Trespass upon the Case, &c. to be repeated in *Declarations*, and not in the original Writ. Unnecessary Length of Declarations is to be forborn. In Actions upon general Statutes, the Declaration not to repeat the Statute, but conclude *contra formam Statuti*, &c. Before Entry, the Plaintiff may amend his Declaration, paying Costs or giving an Imparlance: And after entred, before Issue or Demurrer, it is amendable, by Rule of Court, &c. Term ibid.

Pleadings are to be succinct, without unnecessary Repetitions: Upon Demurrers, the Cause to be specially assign'd, as of wanting Form, &c. (wherein) that the other Party may either join in Demurrer, amend, or discontinue. In *London*, &c. eight Days Notice to be given of *Trials* or Inquiries, where the Defendant lives within 40 Miles of *London*; and 14 Days if he live above 40 Miles; and all Causes to be tried in *London* and *Middlesex*, are to be entred in the *Marshal's* Book 4 Days before Trial, &c. Eight Days Notice exclusive to be given upon Trials in the Country. In Case of Warning, and no Proceedings, the Defendant is to have Costs; unless the Plaintiff give Notice in Time that he would not proceed: And if the Plaintiff proceed not, the Defendant may take it by Proviso, giving Notice, &c. If Issue be join'd above a Year, one Term's Notice to be given of Trial. Term ibid.

In finding Special *Verdicts*, where the Points are single, and no Special Conclusion, the Counsel is to subscribe the Points in Question, &c. And Deeds are to be found according to the Substance, and not *in hæc verba*. Where a Verdict finds entire Damages, and Damages are the Principal, and Part not actionable, a *Venire fac. de Novo* may issue for a *New Trial*.

Term *ibid*.

In Judgment by *non sum Informatus, nil Dicit, &c.* the *Capiatur* is to be entered upon the first Judgment. Upon a Cause removed by *Hab. Corp.* if Judgment be given for the Plaintiff, the Costs below to be cast into the Judgment; if for the Defendant, the Charge of putting in Bail. The Principal in any Bond, Bill, &c. not to confess Judgment against his *Surety*. Sixteen Days to be allow'd for signing of Judgments, after every Term, except Easter-Term.

See the New Oath appointed by Stat.
2 Geo. 2. c. 23.

Attornies of the Court to take an Oath to do no Falshood or Deceit, not to delay Causes for Lucre or Malice, nor to increase Fees, sue Foreign Suits, or any false Suits, &c. upon Pain of Expulsion.

Hill. 14 &
15 Car. 2.

All *Sheriffs* are to have Deputies entered on Record to give their Attendance in Courts, &c. No Sheriff shall deliver any Warrant before the Writ be sued forth and delivered; nor any *Blank Warrants*: And no Attorney shall procure such Blank Warrants, on Pain of Punishment and Fine of Sheriffs, and Expulsion of Attornies.

No Attorney shall permit another to *practise* in his Name, on Pain of Expulsion. No Officer to make Procefs or Entry, in the Name

Name of any Person not sworn an Attorney. Attornies not filing *Warrants* the Term where- in any Exigent is awarded, Demurrer, or Issue join'd, &c. to forfeit 40 s.

Upon a Commitment to the *Fleet* by *Ha-* Term *ibid.*
beas Corpus in *Hillary Term*, the Plaintiff is to bring the Prisoner to the Bar, and declare against him within 6 Days after *Trinity Term* begun, or the Prisoner may be discharg'd by *Supersedeas*. On Commitment in *Easter Term*, or the Vacation following, you must declare within 6 Days after *Michaelmas Term* begun : In *Trinity Term*, before the End of *Michaelmas Term* ; In *Michaelmas Term*, within six Days after *Easter Term* begun, or the Defendant may be discharged.

Sheriffs duly to return and execute *Writs* Hill. 15 &
and *Process*, and take sufficient Security for 16 Car. 2.
Appearance of Persons arrested before they are set at Liberty : Upon a *Cap. utlagat*. Persons not to be set at Liberty, or Lands discharged, without Writ of *Supersedeas* ; and no *Supersedeas* to issue without first taking sufficient Bail.

Supersedeas to be put into *Writs of Exigent*, Mich. 17
before the Return of the Writs, or Costs to Car. 2.
be allow'd the Plaintiff. Upon Reversal of Outlawry, Special Bail to be given by the Defendant, if the Money or Damages amount to 20 l. &c. and Costs to be paid.

No Attorney without Leave of the Court, Trin. 21
shall shift from the *Prothonotary's Office*, where Car. 2.
he hath made his Election, and is sworn and settled ; upon Pain of Displeasure of the Court ; and for the second Offence Expulsion.

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And other *Prothonotaries* not to permit such Attorney to enter Causes in their Office.

All Attornies, &c. are duly to enter *Imparlances* or *Incipiturs* in all Causes, or it shall be Cause for the Defendant to have a further *Imparlance*. And no common Rule shall be given to plead, if there be no such Entry, without the Allowance of the *Prothonotary*.

Pasch. 24
Car. 2.

No *Sheriff*, &c. shall return a *Reddidit se*, where the Defendant hath not rendered himself: And no *Retraxit* shall be left with any Under-Sheriff, &c. until entered upon the Roll, upon which an Exigent is awarded. *Writs* of *Supersedeas* to be duly sign'd and seal'd, or they shall not be received by Sheriffs, &c.

Attornies are to enter *Appearances* for Defendants with the *Filazers* for the County, from whence the Process issues. And no *Imparlance*, &c. shall be allow'd until Entry: Nor Declaration received, or delivered.

Pasch. 27
Car. 2.

For *Arguments at Bar*, Copies of the Record of the Cause to be delivered to all the Judges a Week before hearing; and no Argument to be heard without it. If the Plaintiff does not deliver Copies to the Lord Chief Justice, and the senior Judge, the Attorney on the other Side may, Three Days before the Hearing; and shall be re-imbursed the Charges.

Trin. 28
Car. 2.

No Attorney shall make out any *Execution*, until he have a Certificate from the Clerk of the Errors that the Record is not removed, and a *Non Prof.* duly signed. Attornies are to bring all *Writs of Error* to the Clerks

Clerks of the Errors to be allow'd, or the Plaintiff may proceed to Execution.

All Rules, Orders and Caveats for stop-^{Hill. 28 &}ping of *Fines* levied by *Feme Coverts*, *Infants*,^{29 Car. 2.} &c. are to be renewed or continued every Term; and Copies left with the Officers concern'd in passing of *Fines*. And the Books and Entry of *Fines* to be search'd termly.

Attornies and *Officers* are to be admitted^{Trin. 29} into some *Inns of Court*, and take Chambers^{Car. 2.} there, or Lodgings near, and none to be sworn *Attornies* but such as are thus admitted: The *Clerk of the Warrants* is to certify that an *Attorney's* Name is upon the Roll of *Attornies*, before he shall have Writ of Privilege.

Records of *Nisi prius* to be sign'd and seal'd within 3 Weeks after the End of *Hillary*, and *Trinity Terms*.

Writs and Warrants as relate to *common Recoveries*, are to be left with the *Prothonotary* at the Time of examining and signing the Exemplifications, with the usual Fees for filing them; and the *Custos Brevium* and Clerk of the Warrants are to receive them into their Offices from the *Prothonotaries*.^{Mich. 29}
^{Car. 2.}

The Writ of Entry on Recoveries, to be signed by the Attorney General, &c.

Where an *Oatlawry* is reversed, if the^{Trin. 33} Plaintiff proceeds not in two Terms after^{Car. 2.} Notice, the Defendant to have Costs, &c.

The *Postea* upon Action by *Qui tam*, &c.^{Pasch. 34} upon penal Statutes where Verdict is for the^{Car. 2.} King, to be delivered to the *Prothonotary*, in whose Office the Cause is prosecuted, the first Day of the next Term, that Judgment

may be entered on the Record, and the Penalty levied.

Rolls to be brought into the Office, after every Term, by Attornies and Clerks of the Court.

Pasch. 2.
Fac. 2.

Clerks of Assize and the *Chief Justices associate*, are to return all *Postea's* upon Records and Proceedings on Writs of *Nisi prius*, *Distringas*, &c. and deliver them to the Prothonotaries upon the *Quarto die post* of the Return of the Writ of *Nisi prius*, on Pain of 20*l.*

Trin. 2.
Fac. 2.

No *Outlawry* after the Death of the Plaintiff, shall be reversed without the Defendant's Appearance, and putting in Bail to the Executor or Administrator of the Plaintiff; provided the Plaintiff's Attorney, within 14 Days after Notice of the Defendant's Intention to reverse the Outlawry, deliver the Names of such Executors, &c. to the Prothonotary. If a *Superfedeas* be not put in on a Writ of Exigent, before the Day of Appearance, it shall not be allowed until the Defendant hath paid Costs. Where Persons are enlarged upon a *Cap. utlagat.* before Judgment, without a *Superfedeas*, the Sheriff, &c. shall be punished and fined.

Upon reversing of an *Outlawry*, before any *Superfedeas* is granted, the Defendant which reverseth it is to give *Special Bail*, if the Sum or Damages amount to 10*l.* and pay Costs to the Plaintiff.

Hil. 2 & 3.
Fac. 2. Vi.
de antea
Stat. 4, 5.
Ann.

Attornies for the Plaintiff and Defendant, in all Actions and Suits, are to deliver *Warrants of Attorney* to the proper Officer to be entered and filed on Record: And on prosecuting

enting any Cause to Issue, the Plaintiff's Attorney, on delivering a Copy of the Issue, shall receive of the Defendant's Attorney the Fee for filing his Warrant, or on Refusal sign Judgment, &c. and the Plaintiff's Attorney shall file as well the Defendant's, as the Plaintiff's Warrant of Attorney, before making up the Record.

The Defendant's Attorney who puts in *Trin. 1. W.*
Bail to any *Cap. ad Respondend.*, &c. shall have *& M.*
Recourse to the proper *Filazer*, in whose Office the Bail ought to be entred, and shall with him or his Clerk come into Court or attend one of the Judges to take the same: And where any Bail is taken on the *Filazer's Writ*, without the proper *Filazer*, it is no Bail.

Rules for the Sheriff to bring in the Body of a Prisoner, taken on a *Filazer's Process*, to be given by the *Filazer* issuing out the *Process*.

All *Issues* are to be entred the Term they are *Pasch. 3.*
joined, and not in any subsequent Term. *W. & M.*
Prothonotaries shall not sign any Records of *Nisi prius* until the same or an *Incipitur* be entered on Record, and the Fees paid.

Officers of Courts are to deliver in all their *Rolls of Trinity, Michaelmas, and Hillary Terms*, to the Clerk of the *Essoins*, before the *Essoin-Days* of the Term following; and their *Rolls of Easter Term*, before the first Day of *Trinity*.

Rules in Proceedings upon *Declarations*, *Term ibid.*
delivered to *Prisoners* in *Country Gaols*:
They are not to be delivered 'till after *Return* of the *Process*; *Affidavit* is to be made
of

The Practising Attorney:

of Delivery; and if the Defendant doth not enter his Appearance, within 10 Days after *Easter* or *Michaelmas Term*, &c Judgment may be entred; but he may imparl 'till next Term, if the Action be not in *London* or *Middlesex*. Where *Rules* are given to *appear and plead*, when they are out, Judgment may be signed for Want of Appearance.--- If the Declaration be not entred at the End of the next Term, before the End of 20 Days after such Term, the Prisoner shall be discharged on entring his Appearance.

Trin. 9 W.
3.

Writs of Privilege, &c. to be signed by the Clerk of the Warrants, to shew the Person is an Attorney of the Court, or shall not be allowed, or be of Force.

Mich. 4 Ann.

Attornies are to be admitted of *Inns of Court*, and take *Chambers* there, except such as are *House-keepers* in *London* and *Westminster*, &c. and none others to be sworn: No Attorney to put himself out of one Society, till admitted into some other; and all Attornies are to come into and continue in *Commons* the Time ordered.

Hill. 9 Ann.

In *Trials at Bar*, the Plaintiff's Attorney before the *Essoin-Day* of the Term of Trial, is to give Notice to the Prothonotary of the Day appointed, to be put down in the Court-Book, or the Cause not to be tried that Term.

The Plaintiff before the End of the next Term, after Return of Process, to declare: If he does not, at the End of that Term, in the Vacation, the Defendant may sign a *Non prof.* and not afterwards.

No

No *Bail-Bonds* taken in *London* and *Middlesex*, to be put in Suit till 4 Days after the Appearance-Day of Return of Writs; nor in any other County, till after 8 Days.

Where the Plaintiff concludes *ad Patriam*, *Trin. 2 Geo.* the Defendant's Attorney shall accept of No- *Hill. 6 Geo.* *tice of Trial* on the Back of the Pleading, and such Notice to be as good as if Issue join'd. If the Defendant doth not join Issue after Judgment, his Attorney to accept Notice of executing Writ of Enquiry from the Notice of Trial.

No *Countermand of Trial* at the Assizes to *Mich. 6 Geo.* be good, unless given 2 Days before the Commission-Day.

Attornies within 4 Days after Appearance- *Hill. 6 Geo.* Day on Writs in *London* and *Middlesex*, and within 8 Days after Appearance-Day on Writs in the Country, to enter their *Appearances*, or be liable to Attachment, and Costs; and the Defendants to plead as if they had been duly entred, &c.

Sheriffs, &c. not returning Writs within 6 *Hill. 8 Geo.* Days after a Rule serv'd for it, to pay Costs.

No *Recipiatur*s allow'd to be entered for the *Sittings* after Term, unless the Records of *Nisi prius* and Writs be brought into Court before the Day of *Sittings*. *3 Sal. 363.*

If the Plaintiff proceeds not to *Judgment* *Pasch. 9 Geo.* against one in the *Fleet* in 3 Terms after Declaration; or having obtained Judgment, doth not charge him in Execution in 2 Terms; unless Cause be shewn, &c. the Defendant to be discharged by *Superseadas*, &c.

Trin. 10 Geo.

Recites the Rules of *Trin. 2 Geo.* and *Hill. 6 Geo.* touching *Notice of Trials*, and *executing Writs of Enquiry*; and that the same have by Experience been found to be of great Advantage to Plaintiffs, for speedy Recovery of their Debts: But no Provision being made in Cases where Defendants demur to the Declaration, and by that Means give great Delays to Plaintiffs; because by those Rules Defendants are not obliged till after Judgment obtained to accept of Notice of executing Writs of Enquiry. Therefore ordered that where the Defendant demurs to the Plaintiff's Declaration, the Defendant's Attorney, or Clerk in Court, shall accept of Notice of executing such Writ of Enquiry on the Back of such Joinder in Demurrer. And in Case the Defendant pleads such a dilatory Plea, that the Plaintiff is obliged to demur thereto, the Defendant's Attorney or Clerk in Court, shall be obliged to accept of Notice of executing a Writ of Enquiry on the Back of such Demurrer.

Notice of executing Writs of Enquiry.

Mich. 12 Geo.

Bail on Writs of Error, and reversing Outlawries.

Before Allowance of any Writ of Error, or reversing of any Outlawry for want of any Proclamation on the Statute; the Defendant in the original Action shall put in Bail, not only to appear and answer to the Plaintiff in the former Suit, in a new Action, for the same Cause as the first; but also to satisfy the Condemnation, if the Plaintiff shall begin his Suit before the End of 2 Terms next after the Allowance of the Writ of Error, or otherwise avoiding of the said Outlawry.

Note;

Note; *Trim. 1 Geo. 2.* It was ordered in *B. R.* for better establishing the Practice of that Court, on the Act for preventing frivolous Arrests, That where a Copy of the Process of the Court was served on a Defendant, and an Appearance Entred, or common Bail filed by the Plaintiff's Attorney, the Plaintiff's Attorney shall leave a Copy of the Declaration in the Office with the proper Officer there, and also give Notice thereof to the Defendant by delivering *an English Note written in a Secretary Hand* to such Defendant, or by leaving the same at his last or most usual Abode; signifying *the Nature of the Action, at whose Suit prosecuted,* and the *Time limited by the Rules of the Court for the Defendant to Plead thereto;* and that if he does not Plead thereto by such Time, Judgment will be Entred against him by Default: And from the Time of giving such Notice such Declaration shall be deemed well delivered, and not otherwise; and in case such Defendant after such Notice do not Plead by the Time the Rules for pleading are out, the Plaintiff may sign his Judgment without further calling for a Plea, and thereon give Notice of executing his Writ of Enquiry, either by delivering a Notice in Writing to such Defendant, or by leaving it at his last or most usual Abode, &c. And whereas, Defendants have been usually allowed 8 Days Time to plead, it is ordered, that after the first of next *Hill. Term*, 4 Days only shall be allowed the Defendant from the Time of giving such Rules, to plead. Signed by all the Judges of *B. R.*

And

The Practising Attorney :

C. B.

And in *Mich.* following, a like Order with little Variance was made in *C. B.* and signed there *per omnes*. See *Instit. Leg.* 12, 13.

B. R.

Also in *Trin.* 2 *Geo.* 2. Ordered in *B. R.* that in every Cause where special or common Bail shall be filed, and Notice given to the Plaintiff's Attorney, a Copy of the Declaration shall be delivered to the Defendant's Attorney, who shall pay for it at the usual Rates; but if the Defendant's Attorney, or his Clerk in his Absence, refuses to pay for such Copy; or if the Habitation of the Defendant's Attorney be unknown to the Plaintiff's Attorney, then the Copy may be left with the Officer of this Court appointed for filing Declarations, and Notice thereof must be forthwith given to the Defendant or his Attorney; and such Declarations shall be held well delivered from the Time of such Notice only.

B. R.

And in *Hilary* 2 *Geo.* 2. It was further ordered in the *King's Bench*, that where a Defendant is arrested by any Process of the Court wherein the Cause of Action is especially express'd; or a Copy of such Process delivered to a Defendant according to the Form of the *Stat. supra*, and the Plaintiff shall Declare thereupon; the Defendant in such case shall not have Liberty of Imparling without Leave of the Court first granted; but shall plead within the Time by the Course of the Court allow'd to a Defendant prosecuted by original Writ; and in Default thereof, Judgment may be Entred against him by Default.

This

This is a concise *Abridgment* of all the *Rules* and *Orders* of the Common Law Courts, from the Beginning to this Time, i. e. *Hill. 2 Geo. 2.*

The Methods of PRACTICE in the Court of KING's BENCH.

Of Terms, and their Returns, &c.

THE first Thing necessary to be known in Order to Practice, is the *Terms* and their *Returns*: As to the former of which, both the Courts of *B. R.* and *C. B.* observe the same Times for holding their Assemblies for the Distribution of Justice; but as to the *Returns*, there is some Difference made by the respective Courts.

Beginning and Ending of Terms, Es-join-Days, &c. Inst. Leg. 35, &c.

The Terms are in Number four, *Michaelmas Term*, *Hillary Term*, *Easter Term*, and *Trinity Term*, which begin and end at the Times following, *viz.*

Michaelmas Term begins the 23d of *October*, if it be not on a *Sunday*, but if *Sunday* the Day following; and ends the 28th of *November*, if it be not a *Sunday*, and if it be, the Day after.

Hillary Term commences the 23d of *January*, and ends the 12th of *February*; except either of those Days fall on a *Sunday*, (which is no Law-day) and then on the Days following.

Easter

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Easter Term begins the *Wednesday* Fortnight, or seventeen Days, after *Easter*, and ends the *Monday* next before *Whitsunday*.

Trinity Term commences the next *Friday* after *Trinity Sunday*, and *Friday* se'nnight after *Whitsunday*, and ends the *Wednesday* fortnight after it begins.

3 Sal. 345.
1 Cro. 102.

In Law, the first *Essoin-Day* (which is the 4th Day inclusive before the first Day) is accounted the first of the Term; and on that Day, one of the Judges always sits to take *Essoins*, &c. And the four Days in Term, are 1st the Day of *Essoin*, 2^d of *Exceptions*, 3^d *Return of Writs*, (and the 4th the Day of *Appearance* whereon the Court sits, called the *Quarto die post*. (or fourth Day after.) Every Term begins on the fourth Day after of the first *Return*, and ends the fourth Day after of the last *Return*, unless either of them happen to fall on a *Sunday*, and then it begins or ends on *Monday* the Day following.

Except *Trinity Term*, the first *Essoin-Day* whereof being *Monday*, the fourth Day regularly is the *Thursday* after, but that being *Christ's Body Day*, and no juridical Day, the 4th Day is held on the *Friday*. *Vide post*.

The first *Essoin-Day* of *Michaelmas Term*, is always on the 20th of *October*; of *Hilary Term*, on the 20th of *January*; of *Easter Term*, on the *Sunday* fortnight after *Easter*; and of *Trinity Term*, on the *Monday* or *Morrow of Trinity Sunday*. And the same Day of the Week that *Michaelmas Term* begins, the next *Hilary Term* ends; and the same Day of the Week that *Michaelmas Term*

Term ends, the next *Hillary Term* begins :
And as both *Terms* being the same Day of
their respective Months, this may be a useful
Observation to such who have Occasion in
Michaelmas Term, to make Writs returnable
in *Hillary Term*, before the Almanacks for
the new Year are publish'd.

Michaelmas Term contains five *Returns of*
Weeks and two Days, and has *Writs in*
six *Returns.* *Terms.*

See Inst. Leg.
205.
In the King's
Bench,

1. On (Thursday) next after three Weeks of Saint Michael.
2. On (Tuesday) next after one Month of Saint Michael.
3. On (Tuesday) next after the Morrow of (all) Souls.
4. On (Thursday) next after the Morrow of Saint Martin.
5. On (Thursday) next after the Octaves (eight Days) of Saint Martin.
6. On (Thursday) next after the Quindism (fifteen Days) of Saint Martin.

1. From the Day of Saint Michael in three *The Com-*
Weeks. *mon Pleas.*
2. From the Day of Saint Michael in one Month.
3. In the Morrow of (all) Souls.
4. In the Morrow of Saint Martin.
5. In the Octaves (eighth Day) of Saint Martin.

H

6. From

6. *From the Day of Saint Martin in fifteen Days.*

Hillary Term contains three Weeks, and hath four *Returns*.

K's. Bench.

1. *On — day next after eight Days of Hillary.*
2. *On — day next after the fifteenth of Hillary.*
3. *On — day next after the Purification of the Blessed Virgin Mary.*
4. *On — day next after the eighth Day of the Purification of the Blessed Mary.*

Com. Pleas.

1. *In eight Days of Hillary.*
2. *From the Day of Hillary in fifteen Days.*
3. *In the Morrow of the Purification of the Blessed Mary.*
4. *In eight Days of the Purification of the Blessed Mary.*

Easter Term contains three Weeks and six Days, and hath five *Returns*.

K's. Bench.

1. *On — day next after the fifteenth of Easter.*
2. *On — day next after three Weeks of Easter.*
3. *On — day next after one Month of Easter.*

4. *On*

4. On — day next after five Weeks of Easter.
5. On — day next after the Morrow of the Lord's Ascension.

1. From the Day of Easter in fifteen Days. Com. Pleas.
2. From the Day of Easter in three Weeks.
3. From the Day of Easter in one Month.
4. From the Day of Easter in five Weeks.
5. In the Morrow of the Lord's Ascension.

Trinity Term wants one Day of three Weeks, and hath four Returns.

1. On — day next after the Morrow of holy K's Bench Trinity.
2. On — day next after eight Days of holy Trinity.
3. On — day next after fifteen Days of holy Trinity.
4. On — day next after three Weeks of holy Trinity.

1. In the Morrow of holy Trinity. Com. Pleas.
2. In eight Days of holy Trinity.
3. From the Day of holy Trinity in fifteen Days.
4. From the Day of holy Trinity in three Weeks.

In each Return throughout the respective Terms, are the four several Days before mentioned, viz. The Effoin-Day (being the Day mention'd

mentioned in the Writ;) the Exception-Day, the Return-Day, and the Day of Appearance, which is the last of the Return. And 'tis observable that whatsoever Day of the Week any Term begins, is a good Day to make all Proceſs by Bill, returnable upon *Prox. poſt* every other Return of ſuch Term, except the laſt Return which has no *Dies poſt*. But St. *John Baptiſt's* Day, when it falls in *Trinity Term*, (unleſs it happen to be the firſt of the Term) and all Non-juridical Days, muſt be avoided, becauſe they are no Days in Court (to wit) every *Sunday* in any Term, the Feaſts of *All Saints*, and *All Souls* in *Michaelmas Term*, the Purification in *Hillary*, the Aſcenſion in *Eaſter*, and *Midſummer-Day*, if it fall within that Term.

3 *Sal.* 345.
2 *Cro.* 16.

3 *Sal.* 345.
1 *Roll. R.* 29.

But Note; if the next *Friday* after (*Corpus Chriſti*) *Chriſt's Body* Day happen to be on *Midſummer-Day*, yet that muſt be a Hall-Day. For the *Friday* next after *Corpus Chriſti* is appointed by the Stat. to be the firſt Day of *Trinity Term*. Contra, if *Midſummer-Day* happens to fall on the laſt *Wednesday* in this Term. For then the Court muſt adjourn from the *Tueſday* (before) to the *Thursday* (after) whereby the Term is continued a Day longer than uſual.

Days certain,
&c.

All Proceſs in *B. R.* upon Bill of *Middleſex*, *Latitat*, *Alias*, *Pluries*, &c. both before and after Judgment, muſt be returnable at Days certain, and may be ſo made upon any Day in Term (which is *Dies juridicus*) *Prox. poſt* any of the before mentioned Returns: And the Proceſs by Bill in this Court is returnable, naming the Day of the Week, &c. thus: (*Coram nobis*, &c.) *Before us at Weſtminſter*

minster on Thursday next after the Morrow of the Purification of the Blessed Mary, &c. But if the Proceſs be by Original, then 'tis (*Coram nobis, &c.*) Before us in the Morrow of the Purification, &c. (not naming the Place or Day of the Week) whereſoever we ſhall then be in England. And all Writs returnable *Ubiunque* (whereſoever) in B. R. are grounded upon Originals out of Chancery, or upon Writs of Error for removing Cauſes out of the Common Pleas and inferior Courts.

In C. B. the Writs being by Originals, are not returnable on Days certain, but only (*Coram Juſticiariis*) Before our Juſtices at Weſtminſter, from the Day of St. Michael in three Weeks, &c. Yet if the Action here is not by Original, but by ſome other Writ, as Attachment of Privilege, Prohibitions, &c. ſuch Writs, and all Proceſs thereupon, are returnable and have Continuance to Days certain; as on Wednesday next after three Weeks of St. Michael, &c. See 6 Mod. 268, &c.

The two iſſuable Terms are Hillary and Trinity, when the Iſſues are join'd, and Records made up for Trials in the County. Iſſuable Terms.

Of Actions, Writs, Proceſſes, and Arreſts in B. R.

AN Action is the Right which a Man has to his Suit, and the Writ is grounded thereupon, and is the Means of recovering that Right. Every Act of Parliament made to redreſs any Injury or Grievance, gives by Implication a Remedy to the Party griev'd; and he may have an Action grounded upon the Actions defined. Co. Lit. 283, 288. 2 Inſt. 40. Inſt. Leg. 43.

The Practising Attorney :

the Statute, though no Action be particularly named in it.

The personal Actions prosecuted in the Courts at *Westminster*, are usually divided into Actions of Debt, Actions upon the Case, Slander, Trespass, Detinue, Trover, Waste, &c.

*Several Sorts
of Actions.*

Action of Debt lies where any certain Sum of Money is due to a Man by reason of Account, Bargain, Contract, Obligation, &c. *Action upon the Case* lies for Deceits in Contracts, Bargains, Sales, &c. as where one Man sells another adulterated Wine, Corn full of Gravel, Goods or Wares by false Weights or Measures; warrants a Horse to be sound that is not so, short Cloth to be of such a Length, &c. and this Action also lies in all Cases for Breach of Promise, and for Nuisances. *Action of Slander* is brought for Words spoken which affect a Man's Life, Liberty, Office, Trade, &c. tend to Loss of Preferment in Marriage, Service, &c. or to a Man's Disinheritance : For any Words which occasion a particular Damage, this Action may be brought. *Trespass* lies where any Person assaults and beats another ; makes an Entry on my Lands, and does Damage, &c. *Detinue* is for Recovery of Goods, or any other Thing lent or delivered : *Trover* properly is where another comes to the Possession of any Goods by finding, &c. *Vide post.* And *Waste* is when any Destruction is made either in Houses, Lands, Woods, &c. by Tenants for Life or Years, to the Prejudice of the Heir of him in Reversion.

All

All real and mixt Actions, and Trespaffes in Lands, must be laid in the same County where the Land lieth, for they are *local Actions*: But all personal and *transitory Actions*, as Debt, Detinue, Account, Assault, &c. may be brought in any County, and laid in any Place, where the Plaintiff pleaseth, (except it be against an Officer for any Thing done in his Office) tho' these Actions are generally laid in that County where the Cause of Action did first arise, pursuant to the Stat. 6 R. 2. c. 2.

Actions how laid.
6 Mod. 228.

In personal Actions, several Wrongs and Causes of Action of the *same Nature*, may be comprehended in the same Writ; as one Action of Trespafs will lie for several Trespaffes, done at several Times; one Action of the Case, for divers Promises; one Action of Debt, for two Debts, &c. *vide post*.

1 Danv. 2.
3. 8 Co. 87.
88.

And in a Writ you may have four Defendants; but you can have but one Plaintiff in a Writ, unless it be in a joint Action.

1 Danv. 5. 6.

In prosecuting of Actions you must first consider the Quality and Privilege incident to several *Persons*, who are not liable to Arrests, or have other Advantages over you, before you proceed: Peers of the Realm, and Members of the *House of Commons* are not to be arrested during the Time of Privilege; and Corporations and Companies cannot be arrested; but against these you must bring a *Distringas*: Also Attornies of the Court, and Officers and Clerks may not be arrested; for if they are, they may plead their Writ of Privilege, and come off without Bail. Likewise the *Place* where Persons live is to be

What to be considered in Actions,
Sal. 512.

Cumb. 6.
319. 2 Sal.
544. 5. 3 Sal.
282. 3.
1 Mod. 10.
298.

regarded; for a common *Latitat* out of *B. R.* is not of Force in *Wales*, nor in a *County Palatine*, or in the *Cinque Ports*; but a special *Latitat* may be executed in a *County Palatine*: If your Suit be against any living in those Places, the best Way is by Writ of *Quo Minus* out of the *Exchequer*.

3 *Sa.* 91, 92.
6 *Mod.* 74, 75.

It is commonly held, that the King's Palace is privileg'd from Arrests, without a Licence for that Purpose from the Board of Green Cloth; and yet that Privilege has been denied when the King is always absent, and therefore the pretended Privilege of *Whitehall*, *Somerset-house*, &c. seems not justifiable.

First Process.

If the Defendant in the Action be not privileged either in Persons or Place, and if the Plaintiff is not an Attorney or Clerk of the Court, (who may have Attachment of Privilege) the first Process in *B. R.* is usually a *Bill of Middlesex*, which is to arrest the Defendant in that County; but if the Defendant live in any other County, you must take out a *Latitat* (which recites a *Bill of Middlesex* to have preceded, and *non est Inventus* returned) and is directed to the Sheriff of the County or Place where the Defendant lives. The *Bill of Middlesex* is as follows:

The Form of a Bill of Middlesex.

Bill of Mid. Middlesex, ff. *It is commanded to the Sheriff, That he take A. B. if he be found in his Bailiwick, and keep him safely, so that he may have his Body before the Lord the King at Westminster, on Thursday next after three Weeks of St. Michael; (i. e. the Day of the Return)*

Inst. Leg. 44. *See The English Lawyer,* 390, 391.

Return) to answer to C. D. of a Plea of *Trespass*. And that he have there then this Precept.

By Bill. Ventris.

Note; This Bill, and all other Proceſs, must be indorſed with the Attorney's Name, and the Day when ſued out. If the Action requires good Bail, according to the late Statute; And after the Words *Plea of Trespass*, you are to add, *and also of a Bill of him, C. D. against the foresaid A. B. for Ten Pounds (or as the Debt is) of Debt, according to the Custom of the Court of him the Lord the King, to be exhibited before him the King: And that he have, &c. as above.* And if there be any other Cause for special Bail, it must be added with an (*acetiam*) *And also of a Bill, &c. according to the Nature of the Case.*

If for *Trespass* and taking away Goods, say *And also of a Bill, &c. for taking and carrying away of the Goods and Chattels of him C. D. to the Damage of 20l. according to the Custom of, &c.*

If for *Detinue*, add, *For detaining Goods and Chattels of him C. D. to the Value of 40l. according to, &c.*

If *Trover*, *For converting and disposing Goods, &c. to the Value of 40l. according to, &c.*

If *Covenant*, *For Breach of Covenant, to the Damage of him C. 60l. according to, &c.*

If *Assumpsit*, say, *For not performing the Promise and Undertaking of him A. B. according, &c. or, For Breach of a Promise and Undertaking, to the Damage of him C. D. 20l. &c.*
or

or thus: For 20l. upon an (*Assumption*) *Undertaking*, which last is most usual.

1 *Mod.* 2.

6 *Mod.* 230.

Cumberb. 57.

58. 1 *Lev.*

39.

*Processes how
made out.*

In a dangerous *Battery*, the Plaintiff petitioning a Judge, he will order Bail in such Sum as he thinks fit; and then you insert in the Writ thereupon, *And also a Bill, &c. for 20l. &c. By Order of Court.* In these Cases the Sheriff can take Bail accordingly.

When you have made out your Bill of *Middlesex* on a Piece of Parchment, on the Backside whereof must be indors'd the Clerk's Name that sues it out, and the Day of the Month; you are also to make a Note in Paper, and carry both to the Bill of *Middlesex* Office in *New Inn*, where your Writ is sign'd, for which the Fee is 6*d.* in Term-Time, and 10*d.* in the Vacation. The Note for the Office is thus:

Middlesex, ff. Bill for C. D. against A. B. for 14l. Returnable Thursday next after three Weeks of St. Michael.

10th of *March*,
1731.

BROOKS.

And this Note is left at the Office.

Offices.

Then you must carry your Bill to the Sheriff of *Middlesex*'s Office, where you have a Warrant made thereon, which if general, costs only 4*d.* and if special, 2*s.* 4*d.* And if the Defendant is not taken on the first Bill, you may make an *Alias*; and if not upon that, a *Pluries*; for the Signing whereof you ought to pay

pay only 2d. if sued out within a Year after the first Writ.

Thus the Proceedings in *B. R.* which are not by Original or *Distringas*, are begun by Bill of *Middlesex*: And in a *Latitat*, into any other County, a Bill of *Middlesex* is suppos'd to be taken out, (tho' not actually so, except in the County of *Middlesex*,) as appears by the Form of the Writ, viz.

The Form of a Latitat.

GEORGE the Second, by the Grace of God, *Latitat.*
King of Great Britain, France and Ire-
land, Defender of the Faith, &c. To the Sheriff of Devon Greeting: *See Bohun's English Law-
yer, 390,
391, &c.* Whereas we had lately commanded our Sheriff of *Middlesex*, that he should take D. G. and E. F. if they should be found in his Bailiwick, and safely keep them, so that he might (should) have their Bodies before us at Westminster, at a certain Day now past, to answer to A. B. of a Plea of Trespass; And also to a separate Bill of him A. against the foresaid C. and E. for Ten Pounds of Debt, according to the Custom of our Court, before us to be exhibited. And our said Sheriff of *Middlesex* at that Day return'd to us, That the said C. and E. (or either of them) were not found in his Bailiwick. Whereupon it was, on the Behalf of the said A. sufficiently testified in our Court before us, That the foresaid C. and E. do (lye bid) skulk and strole (ramble) about in thy County: Therefore we command thee that thou take them, if they shall be found in thy Bailiwick, and keep them safely; so that thou hast (may'st have) their Bodies before us
at

at Westminster, on Thursday next after three Weeks of St. Michael, to answer to the foresaid A. of the Plea and Bill aforesaid. And have thou there then this Writ. Witness Raymond, at Westminster the 28th Day of November, in the fifth Tear of our Reign.

Ventris.

General Directions for Writs.

These Writs are to be bought in Blanks, and are generally made in the Plural Number; so that if you have but one Defendant in your Suit, you may add *John Doe* or *R. Roe*.

If the County have two Sheriffs, it must be said in *you, and your County, &c.* and so the rest must be in the Plural Number. Where the Writ is only for Trespasses, you are to leave out the *And also the separate Bill, &c.* to *And the said Sheriff:* And if it be against several Defendants for unequal Sums severally, say, *Against the foresaid C. for Ten Pounds, and against the foresaid E. for Twenty Pounds of Debt, according to the Custom, &c.* But if the Sums be alike, but several, say, *And also the separate several Bills of him A. against the said C. and E. for Ten Pounds of Debt each (severally) according to the, &c.*

2 Sal. 700.

If the Writ be made out in Term-Time, you may make the Teste thereof the first Day of the Term; but if in the Vacation, then let it bear Teste the last Day of the Term preceding. *For a Writ tested out of Term is void.*

And you must also make a Note on Paper in Court-Hand, marking it as before directed, where good Bail is requir'd, thus :

Devonsh.

Dr, Lawyer's Office.

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Devonsh. A Latitat for A. B. against C. D.
for 10 l. and E. F. for 20 l. Returnable Thurs-
day next after 3 Weeks of St. Michael,

BROOKS.

You are to carry your *Latitat* fill'd up, *Writs sign'd*
with the Note of it, to the *King's Bench* and seal'd.
Office in the *Temple*, where your *Writ* must
be sign'd, the Fee for which is 2 s. 6 d. and
you are to leave the Note with the Signer:
Thence you go with the *Writ* to the Seal-
Office in the *Inner-Temple-Lane*, at which
Office it is seal'd, and the Day stamp'd on
the Back, for which you pay 7 d. and then
you are to get a Warrant upon it from the
Sheriff of the County. I have already ob-
serv'd that in a County *Palatine*, there must
be a special *Latitat*, which is to be in this Form.

George, &c. To our Chamberlain of our Special *Latit*
County *Palatine* of Chester, or to his *Leute- tat*.
nant (Deputy) there Greeting: Whereas we
had lately commanded, &c. (as above) There-
fore we Command thee, That our *Writ* under
the Seal of our County *Palatine* aforesaid to be
made in due Manner, and to be directed to the
Sheriff of the County of Chester, thou Cause to
be sent to the same Sheriff, That he take the
foresaid C. D. &c. If they may be found in his
Bailiwick, and them safely keep, so that he
hath (may have) their Bodies, &c.

If the Defendant cannot be arrested on
the *Latitat*, (he Skulks) you may issue an
Alias Capias, (ere-while take) and if not taken
on

The Practising Attorney:

on that, a *Pluries Capias*, (often take.) The Form of an *Alias Capias* is as follows.

An Alias Capias.

George, &c. *To the Sheriff of Kent, Greeting: We Command thee, as we had ere-while commanded thee, That thou take C. D. and E. F. if they may be found in thy Bailiwick, and keep them safely, so that thou hast their Bodies before us at Westminster, on Day, &c. (the Return) To answer to A. B. of a Plea of Trespass; and also to the separate Bill of him A. against the aforesaid C. and B. for 10l. of Debt, to be exhibited according to the Custom of our Court before us. And have thou there then this Writ: Witness Raymond, the 28th Day of Novemb. in the 5th Year of our Reign.*

VENTRIS.

A Pluries.

A *Pluries* is in the same Form as the *Alias*, only inserting *oftentimes* instead of *ere-while*.

The Clerk's Name that sues out these Writs, and the Day of the Month are to be endors'd upon them; and in both the like Note is to be made for the Office as for the *Latitat*, where they are sign'd without Fee; but you ought either to find out the *Latitat* upon the Roll in the Office, or bring your Book to satisfy the Signer that a *Latitat* has issued before. After they are sign'd, you get them seal'd as before, and pay 7 d. for each.

Renewal of Writs.

Your *Pluries Capias* you may continue from Term to Term, until the Defendant be arrested: But if the *Latitat* is not renewed within five Terms after taken out, then you

Dr, Lawyer's Office.

III

you cannot renew it by *Alias* or *Pluries*, but you are obliged to sue out a new *Latitat*. Also one Writ is to bear *Teste* from the Return of the other, as the *Capias* from the Original, &c.

When there are several Defendants in one Writ, some of them Special, and some not, as if it be against *A. B.* for 10 l. of Debt, *C. D.* for 20 l. on Assumpsit (or Promise) and *E. F.* for carrying away and converting Goods and Chattels to 50 l. Damage : Then say, and also to the separate Bill of him *B.* against the foresaid *A. B.* for 10 l. of Debt ; and against the foresaid *C. D.* for 20 l. upon a Promise, and against the foresaid *E. F.* for a Conversion, &c. to his Damage 50 l. &c.

See 2 Salk.

699.

6 Mod. 269.

283 to 286.

Note ; In many *Actions of Debt*, it is the surest Way to make them *Actions of the Case*, wherein if you prove the Money lent, &c. the Law implies the Promise of Payment ; and by that Means the Defendant is barr'd from waging his Law.

Actions on the

Case for Debt.

Where any of the Defendants live in a Liberty where the Sheriff hath no Jurisdiction, you must procure the Sheriff to direct his Warrant on your Writ to the Bailiff of the Liberty to execute it ; which if he refuse to do, the Sheriff is to return a *Mandavi Ballyvo* thereupon ; and then you may make a *Non Omittas*, upon which the Sheriff's Officer, by Virtue of the Warrant from the Sheriff, may enter and execute the Writ, within such Liberty. But for Expedition you may send a *Non Omittas* with your first Writ.

George,

A Non Omittas.

George, &c. To the Sheriff of Kent Greeting: We Command thee, That thou dost not omit, by Reason of any Liberty within thy County, but that thou take C. D. and E. F. &c. if they shall be found in thy Bailiwick, &c. (as in the *Alias Capias*) — The usual Practice for Dispatch, is to send down a *Non Omittas* with the *Latitat*.

Arrest.

If the Debt, or Cause of Action, be under 10 l. the Defendant is not to be arrested, but served with a Copy of the Process, as before is directed by the Statute 12 Geo. 1. c. 29. *Vide ante*, pa. 3, 4.

But if the Debt, &c. be 10 l. or upwards, then, on indorsing the Sum on the Writ, and signing it as aforesaid, the Defendant may be arrested: And then it is the Duty of the Sheriff, by his Officer, to take a Bond, with two or more sufficient Sureties for the Defendant's Appearance at the Return of the Writ, or for Special Bail, as the Nature of the Action is.

Return of Writs.

And if the Defendant being so arrested, &c. does not find Special Bail, as the Case requires, then the Plaintiff's Attorney must call on the Sheriff for a Return of the Writ: If the Sheriff delays it, the Attorney for the Plaintiff is to give a Rule with the Clerk of the Rules, and serve the Sheriff with a Copy, for him to return the Writ; and if he makes Failure in returning the same at the Time appointed in the Rule, the Plaintiff's Attorney, on a Motion to the Side-Bar, may have the Sheriff amerced, producing the Rule wherewith he was serv'd; and the Clerk of the

the Rules will draw up the Side-Bar Rule, whereon you may estreat the Amercements in the Crown-Office: And if he still delays Returning the Writ, you may summon him before a Judge to shew Cause, or at last move the Court against him.

When the Sheriff returns a *Cepi Corpus*, (*I* *Inst. Leg. 50.* *have taken the Body*) (if there be no Appearance or Bail below before Commissioners) you may take out another Rule, and serve it as before, for the Sheriff to bring in the Body of the Defendant, on Pain of 40 s. If the Defendant does not yet put in Bail, you may have a *Hab. Corp.* on the *Cepi*, or proceed as above by Amercement; and so you may, if the Sheriff does not return the *Habeas Corpus*. But the Sheriff usually, having taken good Bail, will return a *Cepi*, and assign the Bail-Bond to the Plaintiff; and then you may arrest the Defendant and the Bail on the said Bond, in your own Name; which you may not do, if you sue in the Name of the Sheriff.

A Habeas Corpus on a Cepi is thus:

George, &c. To the Sheriff of S. Greeting: *Hab. Corp.*
We Command thee, That the Body of C. D. de- *on a Cepi.*
tained in our Prison, under thy Custody, as thou
thy self hast charged thy self by thy Return ere-
while sent into our Court before us, thou have
before us at Westminster, (such a Day) To
answer to A. B. of a Plea of Trespass; and al-
so to the Bill of him A. against the foresaid C.
for One hundred Pounds of Debt, according to
the Custom of our Court before us exhibited. And
I have

The Practising Attorney :

have thou there then this Writ. Witness Raymond, at Westminster 28 Day of November, in the 5th Year of our Reign.

The Sheriff sometimes returns *Languidus in Prifona* (He Langishes in Prifon) ; and then you may bring a *Duces tecum licet Languidus* (bring him with thee tho' he does languish.) And at the Return of all or any of these, you may amerce the Sheriff, &c. *ut ante*.

*Non-Appear-
ance on Ar-
rests.*

If you are for the Defendant, and he is prosecuted on the Sheriff's Bond for not appearing, and the Attorney for the Plaintiff will not otherwise agree, you may on Notice make a Motion in Court that you are content to appear, (as of that Term the first Writ was returnable) and accept a Declaration, &c. Whereupon the Court usually orders the Suit on the Bond to be stay'd, on Payment of Costs. And the same will be done, on the like Offer, if your Amerciaments be estreated : And also the Court will make the like Order, to take off those Amerciaments.

Bail-Bonds.

To stay Proceedings on the Bail-Bond, if you are of the Side of the Defendant, it is best to put in good Bail, and give Notice that you will move the Court that Costs may be taxed on the Bail-Bond by the Secondary, and alledge that you are ready to receive a Declaration in the Original Action, and to plead and try it that Term, and will not delay the Plaintiff : Upon which Notice, and a Motion to the like Effect, a Rule will be granted by the Court ; which you are to draw up and carry to the Secondary, who will

will fix a Day for both Attornies to attend him, and the Plaintiff's Attorney being served with the Rule, brings in the Bill of Costs, which the Secondary Taxes, and the Defendant must forthwith pay, and then receive a Declaration, &c.

But as these Things are often thought too trifling to trouble the Court withal, they are many Times agreed by the Attornies on both Sides, without any Motion, &c.

Of Bail, and Appearance, in B. R.

Bail is Security for the Appearance of the Defendant to answer the Suit; And in Actions of Debt, where the Defendant is indebted to the Plaintiff, by Bill, Bond or otherwise, to the Value of 10 l. or upwards, you may insist upon good Bail; and the Sureties must be Men of Substance, answerable to the Action. But a Man worth 100 l. is a good Surety in common Cases. In what Cases Special Bail is required, *vide ant.*

Where Actions are brought for Slanderous Words, for Battery, in Trespass, and *Ejectione firmæ*, Special Bail is not required, (except in special Cases, by Order of Court) tho' you are like to recover great Damages. In Actions of *Covenant*, unless to pay Money, Bail is not insisted upon, because the Damages are uncertain 'till Declaration, &c. nor in Actions of Account till Judgment, *quod Computet*; nor is it required on Bonds with collateral Conditions, nor against Heirs, Executors or Administrators, unless they

Bail, what.
Inst. Leg. 51.

When not to be given.
1 Lev. 39.

Cymb. 105.
See 1 Lev. 261.
1 Sal. 98,
100.
2 Lev. 399.

have wasted the Testator's Goods. See 1 Lev. 39, 245. 1 Sal. 101, 102.

Appearances.

If the Defendant is prosecuted for a Debt under 10 l. it requires only an Appearance; and the Defendant's Attorney having back'd the Sheriff's Warrant, by Indorsing that he will appear, is to file Common Bail; wherein any Sureties are taken of Course, as *John Doe* and *Richard Roe*, it being nothing but meer Form. Special Bail has been formerly insisted upon, where the Debt, &c. was under 10 l. by laying a large Sum in the Writ, as 20 or 30 l. &c. provided you did not declare for more than your Debt: But this was held a very barbarous and unfair Practice, and in a great Measure occasioned divers of the late Statutes before mentioned. And *per Holt C. J.* Case lies for holding to excessive Bail, &c. See 6 Mod. 266. *Cumberb.* 131. 1 Sid. 183. And now at the Return of the Writ, the Bail may be taken off, on Motion before a Judge, and making Affidavit the Debt is less than 10 l. This is done to obtain a Man's Liberty; and where he cannot find Bail, he may confess Judgment to the Plaintiff, whereby all he is possess'd of is liable to the Debt.

Extraordinary Case.

Bail by Rule of Court.

1 Lev. 245, 268.

2 Lev. 204.

6 Mod. 33.

By Rule of Court, Special Bail is order'd in all Causes of Removal, be it by *Habeas Corpus*, *Writ of Privilege*, *Certiorari*, &c. Except where the Defendant is sued as Executor or Administrator: And when a Cause is removed out of an inferior Court, the Plaintiff or his Attorney are to enter a *Caveat* with the Justices of the Court for good Bail; and the Attorney for the Defendant must

must give Notice to the Plaintiff of the Time when the Bail shall be put in, and of the Names of the said Bail, and where they live, &c. that the Plaintiff or his Attorney may except against the Bail if they think fit.

If Bail be put in on a *Habeas Corpus Return*. *On Hab. Corp.*
immediate, in *Hillary* or *Trinity Term*, and the Declaration is delivered 8 Days before the End of the Term, the Defendant must Plead to enter : But if in *Michaelmas Term*, and the Declaration is delivered before *Craft. Animar*, or in *Easter-Term*, before *Mens. Pasch.* he must Plead to try the same Term.

All *Bail-pieces* are to be written on Parchment in Court-Hand, and, if *Common*, are filed in the Office with the Clerk of the Files of common Bails ; and if *Special*, they are taken before a Judge, or by Commissioners in the County ; and when accepted, then they are also filed.

I 3

Th

Inst. Leg. 53. The Form of a Common Bail-piece upon Cepi Corpus, or Appearance.

Common Bail.

One in Execution is not Bailable, unless there be *Audita Querela* brought.

Midd. ss. A. B. of the Parish of
in the St. Martin in the
King's Fields in the County
Bench. aforesaid, Gent.
Is delivered to Bail
on a Cepi Corpus un-
to John Doe of Lon-
don, Yeoman, and
John Brooks Richard Roe of the
Attorney for same, Yeoman.
the De- At the Suit of C. D.
fendant. Mich. the 5th of Geo.
the 2d.

*The Form of a Special Bail-piece,
upon a Capi Corpus.*

No Defen-
dant is compel-
lable to put in
Bail for a
greater Sum
than mention-
ed in the Pro-
cess. *ant.*

The Additi-
ons of the Bail
and Places of
Abode are to
be inserted.

Midd. ss. A. B. of, &c. in the
County aforesaid,
Gent.

Special Bail.

*Is delivered to Bail
on a Capi Corpus un-
to*

C. D. of, &c. Mer-
cer, and E. F. of, &c.
Grocer.

John
Brooks
Attorney
for the
Defen-
dant.

At the Suit of G. H.

*Mich. the 5th of Geo.
the 2d.*

*The Form of a Special Bail,
upon Habeas Corpus before a
Judge.*

*Bail on Hab.
Corp.*

N. The Writ
of Habeas Cor-
pus is to be re-
turn'd, &c. be-
fore the Bail
shall be put in.

Lill. Reg. 103.

Palace Court. ff. A. B. of, &c.
in the County
of S. Gent.

*Is delivered to
Bail on a Ha-
beas Corpus
unto C. D. of,
&c. and E. F.
of, &c. (as a-
bove.)*

John Brooks
the Plaintiff's
Attorney.

*At the Suit
of the Plain-
tiff in the
Plaint.*

*Mich. the 5th
of Geo. the
2d.*

As to Bail taken before Commissioners in the
Country, by Virtue of the Stat. 4 W. and M.
c. 4. and the Rules and Orders of the Judges
thereupon

thereupon, *vide antea*, under the Head *Bail*, in the *Statutes relating to the Practice of an Attorney*.

After *Bail* is put in before a Judge, the Plaintiff hath 20 Days Time to except against it; which Exception must be entred in the Bail-Book at the Judge's Chamber, at the Side of the *Bail* there put in, in this Manner: *I do except against this Bail. A. B. Attorney for the Plaintiff.* And you must put the Day when you enter your Exception. If there be no such Exception entered, then the Defendant's Attorney may take away the *Bail* piece, and file it. *Exception to Bail.*
6 Mod. 24.

If the Plaintiff excepts against your *Bail*, you may desire the Judge's Clerk before whom it was taken, to bring up the *Bail*-piece into Court, for which you pay him 2 s. 6 d. and then justify your *Bail* in Court. For though the Sufficiency or Non-sufficiency of *Bail* is to be examined by a Judge at his Chamber, yet the Allowances of *Bail* by a Judge out of Court, are but *de bene esse*; and the Court will take Cognizance of extraordinary Matters.

Some cunning Practisers will sometimes bring the Defendant into Court, and then he *Appears in Person*, and is so mentioned on the *Bail*-piece; and in such Case 'tis necessary when you have Notice of *Bail* to be given in Court, that you attend; for then if the Defendant appears in Person, the Secondary (who takes the *Bail*) will give you Notice, and you must declare within three Days, or else may be *Non Prof.* And the Defendant shall have Costs. *Inst. Leg. 91.*
Defendant in Court.

If

If one brought into Court by *Habeas Corpus*, puts in Bail here, that Bail stands liable to all Actions of the same Plaintiff, wherein he shall declare against the Defendant in two Terms after, as far as the Penalty of the Bail-Bond extends: And in like Manner upon a *Cepi Corpus*, if he declare the same Term Bail is put in.

*Declaring on
Bail given.
6 Mod. 268.*

Where Bail is put in, either Common or Special, a Stranger may declare thereon the same Term, sitting the Court; but then it shall be but common Bail to him. But the Party at whose Suit he was arrested, may declare the second Term after the Defendant's Appearance on Bail. *Sed Quer.* if in such Case the Bail shall be liable. It seems now to be a settled Rule, that the Bail shall answer for no more than the Sum for which they became Bail.

*6 Mod. 230.
266, 7.
1 Vent. 233.*

*Reddidit se.
Cumb. 4, 5.*

If the Plaintiff does not declare against the Defendant in two Terms, after Bail is put in; the Defendant may Nonsuit the Plaintiff, and then the Bail are discharg'd: For then the Defendant is to go only upon common Bail, by the Rules of the Court. If the Defendant render himself to Custody in Discharge of his Bail, upon the Day of the Return of the second *Scire facias* against the Bail, *sedente Cur'*, the Bail shall be discharg'd: And the Bail may bring in the Body of the Party for whom he was Bail, at any Time before the Return of the *Alias Scire facias*, and render him up, which will discharge the Bail; but he must take Care to see that the Bail-piece be vacated in the Office.

*Party rendred.
6 Mod. 238.
1 Sal. 98.
101.*

But

But Bail in a Writ of Error cannot render the Party in their Discharge, because they are bound in a Recognizance that he shall prosecute the Writ of Error with Effect, and pay the Debt and Damages, if Judgment be affirm'd.

If the Defendant dies before the Return of the *Capias ad Satisfaciendum* against him, his Bail may plead it in their Discharge to a *Scire facias* against them. But if a *Ca. sa.* be duly sued out, and return'd and filed, and afterwards the Defendant dies, before any *Scire facias* sued out against the Bail; in this Case the Bail shall not be excused.

Bail discharged.
Cum. 139,
304.
1 Sal. 98.
101.

An Original is sued out in London, and Bail put in, and the Declaration laid in another County: It is good against the Defendant; but his Bail are discharged, and not liable to a *Scire facias*.

As a Bail is liable to all Actions of the same Plaintiff the same Term, where a Declaration is exhibited; so where an Attorney is retained by a Defendant, and a Warrant is given to be his Attorney in a Suit depending in this Court, and he files common Bail accordingly, he must appear by that Warrant in all Suits which are there depending against the Defendant in the same Term; (unless he be a Defendant in Ejectment, who comes not into Court by the Process of the Court) provided Declarations are filed in the Office, and Copies delivered to the Defendant, or to the Attorney, who filed the Bail, before the End of the Term his Bail is filed of.

Bail liable to all Actions, and Attorney to all Suits.

And

And the Reason of this is, because the Defendant being, after his Appearance and Bail put in, supposed to be in *Custody of the Marshal*, the Attorney that appears for him is bound to receive any Declaration that is brought against him during that Term.

Declarations delivered.

If the Attorney for the Plaintiff can't find the Defendant's Attorney, to deliver him the Declaration the last Day of the Term, *sitting the Court*, it is requisite for him to give his Attendance at *Westminster*, and get the Secondary to mark his Declaration, that it was tendered sitting the Court, &c. and then the Defendant's Attorney will be obliged to receive it afterwards.

Of Declarations, &c. in B. R.

Declaration defined.
Inf. Log. 128.

A Declaration is the Complaint in Writing of a Plaintiff or a Demandant against the Defendant or Tenant, wherein he supposes to have received some Wrong or Injury from the Defendant, which is to be afterwards made out. And this Declaration ought to be plain and certain, because it compels the Defendant to make Answer to it ; and otherwise the Jury would be at a Loss in giving their Verdict, and the Court be uncertain in giving their Judgment, &c. for they all depend on the Certainty and Sufficiency of the Declaration.

What Requires in it.
Co. Lit. 17.
303.

In Personal Actions this Complaint is termed a Declaration ; but in real Actions it is call'd a *Count*. And therein several Things are to be consider'd, *viz.* 1. The Person complaining. 2. The Person against whom the Complaint

plaint is made. 3. The Cause or Matter of the Complaint. 4. How and in what Manner the Action did arise. 5. The Time and Place the Injury was done. 6. The Damages thereby sustained.

As to Persons, such as can't legally bring an Action, Men attainted of Treason or Felony, outlawed and excommunicated Persons, convicted of *Præmunire*, &c. so long as these Impediments remain, cannot maintain a Declaration. All other Persons, who are not disabled, Whether Men or Women, Ideots, Lunaticks, Deaf or Dumb, &c. may bring Actions, and maintain Declarations: But an Infant Plaintiff must sue by his next Friend, or Guardian, (unless he sue with others as Executor, &c. and then he shall sue by Attorney); and if an Infant be Defendant must appear by Guardian. If an Ideot is Plaintiff or Defendant, he is to appear and sue or defend in Person. A *Feme Covert* must sue with her Husband; and where they are both sued, the Wife shall not be forced to answer without her Husband. When Executors bring an Action, they are to be all named; but when an Action is brought against them, it must be only against such as administer.

Who may maintain Declarations.

Co. Litt. 135 b.

Jointenants of Lands or Goods, must sue jointly in Actions; but Tenants in common, tho' they join in personal Actions, yet in real Actions they ought to sever. Divers Persons may have an Action of Trespass jointly for Goods taken from them: But in Battery, or personal Trespass, they ought to separate: Nor can two Plaintiffs sue in one Action for several Causes, tho' the Causes are of the same Kind; and two Persons may

Joint Actions, and Declarations.

See 1 Danv. 1, 2, 3, 4, 1 Vent. 366. 1 Salk. 10.

not join in one Writ to sue on two Bonds for Debt due to them apart; or sue one Man for a Trespass done to them severally: But one Plaintiff may join two Debts due to him from one and the same Defendant, as Debt upon two Bonds, &c. And so it is of other personal Actions, as Assault, Battery, and Ejectment, in one Declaration; but this can't be done in real Actions. Nor can two personal Actions of *different Natures*, as Torts and Contracts, Trespas and Case, &c. be join'd in one Declaration.

2 Lev. 101.

§ Lev. 74, 99.

If one Trespass be committed by divers Persons, the Plaintiff may make it joint or several, as he pleases; and if they are sued in one Action, they may sever in Pleas and Issues: But a Release to one is a Release to all, as they are joint Trespasgers, and the Jury must assess Damages for all (on each of them, who is answerable for the other) but there shall be but one Satisfaction. And where a joint Action lies against several, and some of their Names are known, and some not; the Action may be brought against them that are known, by their particular Names, and you may declare with a *Simul cum aliis*, &c.

Infant.

When an Infant is Defendant, he is admitted by Guardian before a Judge, in the following Manner:

Kent, ff. A. B. who is within the Age of One and twenty Years, is admitted by the Court of the Lord the King, before the King himself, by C. L. Gentleman, his Guardian, to defend all, and
all

all Manner of Actions and AEs (Suits) depending in the same Court at the Suit of E. F. Raymond.

And if an Infant is Plaintiff, he declares by his next Friend (or his Guardian) thus: (in Battery, &c.)

London, ff. G. G. who is within the Age of One and twenty Tears, by J. S. his next Friend, (or Guardian) (by the Court of the said Lord the King now here specially admitted) complains of A. W. in Custody of the Marshal, &c. of that, That she the foresaid A. the first Day of October, in the fourth Year of the Reign of the Lord George the Second, now King of Great Britain, with Force and Arms, &c. upon him the said G. at London aforesaid, to wit, in the Parish of the Blessed Mary, of the Arches in the Ward of Cheap, made an Assault, and him G. then and there beat, wounded, and evilly treated, &c. (as usual.)

And Note; An Infant may sue either by his next Friend or Guardian; but when he defends, it is to be by a Guardian, admitted *ut supra*; But he can neither sue nor defend by Attorney.

An Attorney may not regularly declare against one that is not either in Custody of the Marshal of B. R. or that hath not filed his Bail, or that is not a privileged Person in this Court; for no other Way can any one be said to be present in Court, so as for the Court to have Conusance of the Matter. And when any one

*Attornies,
Custod.
Marsh.*

one is arrested by a *Latitat* or *Bill of Middlesex* out of this Court, he is not said to be in Custody of the Marshal, until he hath put in Bail to the Plaintiff's Action, and the Bail be filed; or committed to the Marshal for want of Bail.

How to lay
Actions in
Declaration on
Assump', &c.

2 Sal. 417.
660, &c.

Cumb. 420,
421.

Rules concern-
ing Declara-
tions.

If an Action of the Case be brought upon an *Assumpsit*, the Plaintiff must declare upon the whole Promise made, and not upon Part of it; or upon the Trial he may be Non-suited. In *Covenant*, there needs no more of the Deed to be mentioned in the Declaration, than only so far as in the Covenant where the Breach is to be assign'd. Nor in *Slander*, there needs no more Inducement or Preamble than is necessary: But for *Words*, the Declaration must lay them expressly and positively, not with (*these, or the like Words*) nor with, (*to the Tenor and Effect following,*) &c. In Actions upon general Statutes, that the Defendant committed such an Act (*against the Form of the Statute in such Case made and provided,*) is better than to recite the whole Act; but particular Statutes must be recited at large, and an attested Copy produced at the Trial. In an *Information* upon a corrupt Contract, on the Statute of Usury, it must be express'd that the Defendant *corruptly agreed*, or you are to shew that it was made (*for Usury against the Form of the Statute*).

In a Declaration for Words, it is the safest way to lay it, *Falso & Malitiose dixit, &c.* but when *Malitiose* has been omitted it has been held good, if the Words themselves were malicious and slanderous. *Quod cum* (That whereas) being only Recital, is ill in Trespass,

pass, Battery, &c. tho' in Case for Words 'tis well. So in Debt. 2 Lev. 193, 206. 2 Sal. 636. 2 Jon. 197. 2 Sho. 27, 180, 181, 295, 447. If a Declaration begins (*Complains of a Plea of Trespass, For that, That, &c.*) yet it may be a Declaration in Case, for (*of a Plea of Trespass*) will serve indifferently for Trespass or Case. Where an Action of Trespass is removed out of the County Court, the Declaration ought to be without (*with Force and Arms:*) And it has been held, that in B. R. a Declaration (*with Force and Arms*) in Trespass, may be laid under 40s. Damages, because the King is to have a Fine, and a *Capias* for it. In other Cases, this Court hath not Jurisdiction of the Cause where Damages are under 40s.

2 Sal. 636.

A Declaration is not to be made out and delivered to the Defendant's Attorney until after the Cause of the Action accrued. If a Declaration be given of *Michaelmas Term*, and an *Imparlane* to *Hilary*; and then the Issue is made up, with a *Memorandum, That ere-while to wit in the Term of St. Michael last past, &c.* and the Cause of Action is laid to be 10 *Novembris*, which is in *Michaelmas Term*, this is ill. But if the *Memorandum* had been thus: *Memorandum, That on Tuesday next after the Octaves (eight Days) of St. Martin, in the Term of St. Michael last past, before the Lord the King, &c.* then it had been well; and this last is a Day in the Term; after the Day whereupon the Action is laid.

Declaration
after Cause
of Action
2 Vent. 174.
6 Mod. 33.
1 Vent. 134.
2 Lev. 197.
&c.

A Declaration in B. R. doth not refer to the first Day of the Term wherein it is exhibited,

2 Lev. 13.
141, 176.

hibited, but to the Day of filing the Bail in the Actions.

Damages laid.

In all Declarations, it is good to lay sufficient Damages: In *Debt*, it is usual to double the Debt or Damages: In *Case*, to double the Amount of the Injury receiv'd: For *Slander*, to double, if not more, the Damage arising from the Words, as they affect a Man's Life, or Reputation, &c. For *Trespass*, in Proportion to the *Trespass* committed: And for *Battery*, very large Damages are commonly laid, tho' not always recovered. In *Waste*, *Forcible Entry*, &c. where treble Damages are incur'd by Statute, the Damages are to be laid singly, which the Court are to treble; and in other extraordinary Cases, they are laid according to the Value of the Thing to be recovered, and the Nature and Heinousness of the Offence.

Declarations filed.

See 6 Mod.

153.

The Plaintiff is to file his Declaration in Office, and all Copies which are made of it, and the Record it self of the Cause, ought to be directed and warranted by it: The Filing of it there makes it authentick, and it is the Foundation of the Cause depending. Judgment is erroneous for want of a Declaration filed, upon Demurrer or by Default, or Confession; for before it is filed, it is not upon Record, and so there is no Declaration to warrant the Judgment: But after a Verdict, it is no Error, being aided by the Statute of Jeofails.

Warrants of Attorney.

Stat. 4. 5. Anna, 6. 10.

Also the Attornies for the Plaintiff and Defendant, are to file Warrants of Attorney in every Suit; the former the Term he declares, and the later the Term he appears, &c.

on

on Pain of 10*l*. and Imprisonment. These Warrants run thus:

If for the Plaintiff:

Somerſet, ſ. A. B. puts in his Stead C. D. his Attorney, againſt E. F. otherwiſe called, &c. (if the Caſe require it) of a Plea of Debt, &c. A. B.

And for the Defendant thus:

Somerſet, ſ. E. F. puts in his Stead J. K. his Attorney, at the Suit of A. B. of (to) a Plea of Debt, &c. E. F.

As formerly *False Latin*, ſo now by the late Act *False Engliſh* will not hurt a Declaration: And if a Declaration be defective in Matter of *Form* only, and the Defendant takes no Exception againſt it, but pleads to Iſſue, and a Verdict is thereupon found for the Plaintiff, the Defendant cannot afterwards take Advantage of this Defect, which is help'd by the Verdict: But if the Declaration be inſufficient in Matter of *Subſtance*, the Verdict will not help it. The Plaintiff may amend his Declaration in Matter of *Form*, after a general Iſſue pleaded before Entry, without paying Coſts, or giving Imparlanee: But if he amend in *Subſtance*, then he muſt pay Coſts or give an Imparlanee; and if he amend in *Subſtance*, after a ſpecial Plea pleaded, then he is to pay Coſts, although he would give an Imparlanee.

Declarations which are grounded upon original Writs, if they are faulty, cannot be amended; K 2

Defects of
Narr's, and
Amendments.

Narr's a-
mended.

The Practising Attorney:

amended; but a Declaration grounded upon a Bill, (as most of the Declarations in this Court are) is amendable, if the Bill be not actually filed, which is rarely done.

If the Plaintiff's Attorney deliver a Declaration to the Defendant's Attorney, and afterwards doth amend his Declaration, and tenders another Copy with the Amendments to the Defendant's Attorney; the Defendant's Attorney is not obliged to receive it, except the Master of the Office, or a Judge order him to receive it, or the Court do order it upon Motion made.

*Declarations
when delivered.*

In common Practice, your Declaration being written fair, and a Copy thereof taken, the same is to be delivered to the Defendant's Attorney before the *Essoin-Day*, or else you cannot compel him to plead that Term. And if it be not delivered before the Rising of the Court the last Day of the second Term, the Defendant may have Judgment and Costs for not declaring in two Terms; but if you cannot find where the Defendant's Attorney lives, you may engross and File it, which will be of the same Effect, as if you delivered it; but you are to give Notice thereof either to the Defendant or his Attorney, when you find them.

6 Mod. 22.

If a Declaration be delivered of *Hillary Term*, and Rules for pleading given, if the Defendant does not plead before the *Essoin-Day* of *Easter Term*, the Plaintiff may sign Judgment for want of a Plea. But if the Plaintiff has not given Rules in *Hillary Term*, he must give them in *Easter Term* before he can sign Judgment.

On

On the first Day of the following Term, *Rules to plead*
make up your Paper of Rules, writing your
Name and the Term on the Top, and under
that the Names of the Parties, Plaintiff, and
Defendant, as *A. B. against C. D. &c.* and
carry your Paper to the Secondary, who will
now give one peremptory Rule to plead in
eight Days: Carry that Paper to the Clerk
of the Rules to be entered, and pay him 1 s.
and 4 d. then remember to call on the De-
fendant's Attorney for a Plea before the Rules
for Pleading are out, and it is best to leave
a Note in Writing, *that you expect a Plea in
such a Cause.* See the Orders p. 51.

By the Order made by all the Judges, *Copy of Narr's
to be delivered
to the Defen-
dant, and of
Pleas, &c.*
Anno 12 Will. 3. The Copy of the Declara-
tion is to be delivered by the Attorney for
the Plaintiff to the Defendant's Attorney,
instead of the Original; and the Defendant's
Attorney is to pay for such Copy after the
Rate of 4 d. per Sheet Copy-wise, and the
Stamp-Duty. Upon pleading any general Issue,
or general Demurrer to any Declaration, be-
fore any special Plea pleaded, the Plaintiff's
Attorney is to deliver to the Defendant's At-
torney, a Copy of such Issue or Demurrer,
who shall pay for the same 4 d. per Sheet, &c.
And if any Attorney refuse to pay for the
Copy so tendered, the Plaintiff's Attorney
may leave the said Copy of such Declaration
in the Office, with the Clerk that keeps the
Files of the Declarations; and thereupon
giving Rules to plead, may for Want of a
Plea sign Judgment. And before any Plea
shall be received, the Defendant's Attorney
shall pay for the Copy of such Declaration.

The Practising Attorney:

Also the Defendant's Attorney not paying for the Copy of such Issue, &c. Judgment may be signed, as if no Plea or Demurrer had been given or pleaded.

Declaring against Prisoners.

Where a Defendant is taken and imprisoned for want of Bail, the Plaintiff before the End of the next Term after the Writ is returnable, may declare against the Prisoner as in Court, and cause a Copy to be delivered to him or his Gaoler, to which Declaration he shall appear and plead (on Affidavit made of serving the Copy of it;) or else the Plaintiff shall have Judgment as if the Prisoner had not appeared in Court, or refused to answer or plead to such Declaration.

And in Declarations against Prisoners on the King's Bench Process, it shall be alledged in Custody of what Sheriff, &c. (having Return and Execution of Writs) such Prisoner shall be at the Time of the Declaration, which Allegation shall be as effectual as if the Prisoner were in Custody of the Marshal.

A Declaration on a penal Bill.
Inst. Leg. 133.

Midd. ff. A. B. *Complains of C. D. (otherwise call'd, &c.) in Custody of the Marshal, &c. of a Plea, That he render to him 20 l. of good and lawful Money of Great Britain, which he owes to him, and unjustly detains; for that to wit, That whereas the foresaid C. the ninth Day of Novemb. in the 4th Tear of the Reign of the now Lord King George the Second, at the Parish of, &c. in the County aforesaid, by his certain Bill Obligatory sealed with the Seal of him C. and now here shewn to the Court of the said Lord the King, (no Place, &c.)*

Sec.) and dated the same Day and Year, Hath acknowledged himself to owe to the foresaid A. 10 l. to be paid to the same A. in and upon the 10th Day of February then next following, after the Date of the same Bill. And for the same Payment well and truly to be made, the same C. Bound himself, his Heirs, Executors, Administrators in the foresaid 20 l. firmly by the same Bill, and the foresaid A. in Part saith, That the foresaid C. hath not paid (did not pay) to the same A. the foresaid 10 l. in and upon the foresaid 10th Day of Febr. which he ought to have paid to him in and upon the same Day, according to the Form and Effect of the foresaid Bill, whereby an Action has accrued to the said A. to demand and have of the foresaid C. the 20 l. aforesaid; yet the foresaid C. although often-times requested, hath not yet paid the foresaid 20 l. to the foresaid A. but that to him hitherto hath altogether refused (denied) and hitherto doth refuse (deny) to pay; to the Damage of him A. 20 l. and thereon he brings his Suit, &c.

John Brooks for rbo }
 Plaintiff, } Pledges of } J. Doe
 Thomas Selby for rbo } Prosecution } R. Roe
 Defendant, }
 But if your Bill be without a Penalty say, Bill without a Penalty.

Hath acknowledged himself to owe to the foresaid A. the foresaid 20 l. to be paid to the said A. his Executors, Administrators, or Assigns, at or upon (such a Day) next following the Date of the foresaid Bill Obligatory; and for the same Payment well and truly to be made the foresaid

C. bound himself, his Heirs, Executors, and Administrators, firmly by the same Bill; yet the foresaid C. although oft-times requested, hath not yet paid, &c. (as above.)

Michaelmas, the 5th of K. George 2d.

A Declarati-
on in Debt up-
on a Bond.
Inst. Leg. 133.

London, ss. Peter Jones by A. M. his Attorney, Complains against Peregrine D. (otherwise named P. D. of London, Merchant, in Custody of the Marshal of the Marshalsea of the Lord the King, being before the King himself, of a Plea, That he render to him 600l. of lawful Money of Great Britain, which he owes to him, and unjustly detains; for that to wit, That whereas the foresaid Peregrine on the 15th Day of August, in the 4th Year of the Reign of the Lord George the Second, now King of Great Britain, at London aforesaid, in the Parish of the Blessed Mary of the Arches in the Ward of Cheap, by his certain Writing obligatory, sealed with the Seal of him Peregrine, and now shewed here to the Court of the said Lord the King, and dated the same Day and Year, acknowledged himself to be held and firmly bound to the foresaid Peter, in the foresaid, 600l. to be paid to the same Peter, when he should afterwards be thereunto required; yet the foresaid Peregrine, although thereto oft-times requested, the foresaid 600l. to the foresaid Peter hath not yet paid; but that to pay to him hath hitherto altogether (wholly) denied, and yet doth deny: To the Damage of him Peter 300l. And thereof (thereupon) he brings his Suit, &c.

N. The

N. The *Alias diff.* must be literally as in the Bond. And if you declare upon a Sheriff's Bond not assign'd, then say, *Acknowledged himself to be held, &c. to the foresaid A. B. &c. (then being Sheriff of the County aforesaid) by the Name of A. B. Esq; Sheriff of the said County of, &c.* But if the Bond be assign'd according to the late Act, you must declare as Assignee of the Sheriff. See Lilly's Entries, 173, 175, 176.

Midd. ff. A. B. Complains of C. D. otherwise named C. D. of the Parish of St. Clements Danes, in the County of Middlesex, Gentleman, in Custody of the Marshal, &c. of a Plea, That he render to him 100 l. of lawful Money of Great Britain, which he owes to him, and unjustly detains; for that to wit, That whereas the foresaid C. on the 1st Day of November, in the 4th Year of the Reign of the Lord George the Second, now King of Great Britain, at the foresaid Parish of St. Clements Danes, in the County aforesaid, by his certain Writing obligatory, sealed with the Seal of him C. and now here shewn to the Court of the said Lord the King, the Date whereof is the same Day and Year, acknowledged himself to be held and firmly bound to the foresaid A. in the foresaid 100 l. to be paid to the said A. when, &c. (as above.)

Another Decl.
on a Bond.

When the Plaintiff hath declared, if his Clerk do not call for an Answer, nor enter the Action in three Terms after the Defendant's Appearance, the Plaintiff may be nonsuited. But the Defendant is not obliged to plead

The Practising Attorney :

plead till the Third Term, where a Copy of the Declaration is not received before the Effoin-Day of the second Term. Then the Plaintiff's Attorney must get the Secondary to give two Rules for Answer: And when the Defendant hath pleaded, if it be a general Issue, the Plaintiff's Attorney may give Notice of Trial.

*A Decl. in
Case on As-
sumpsit, for
Goods sold.*

Lond. ff. A. B. Complains of C. D. in Custody of the Marshal, &c. For that to wit, That whereas the foresaid A. (such a Day and Year) at the Parish of, &c. at the Special Instance and Request of the foresaid C. had sold and delivered to the same C. to the proper Use and Beboof of him C. (such and such Goods at such and such Rates and Prices) of lawful Money of this Kingdom; The foresaid C. then and there to wit, the Day and Year aforesaid, at, &c. aforesaid, in Consideration thereof assumed, (took) upon himself, and to the foresaid A. then and there faithfully promised, That he the same C. would well and faithfully pay and content to the foresaid A. the foresaid 20 l. of lawful Money of this Kingdom, when he should be thereunto afterwards required: Yet the foresaid C. not regarding his Promises and Assumptions, (Undertakings) aforesaid, but contriving and fraudulently intending craftily, and subtilly to deceive and defraud the same A. in this Particular, the foresaid 20 l. or any Penny thereof, he hath not yet paid to the foresaid A. (although to do this he the foresaid C. has been afterwards often requested by the said A. to wit, (such a Day at such a Place) but he hath hitherto denied, and yet doth deny to pay that to him (A.) From whence

whence he says he is the worse, and has Damage to the Value of 20 l. and thereof he brings his Suit, &c.

In B. R. for Goods sold, the Clerks usually lay 3 Narr's, viz. *Indebitat. Assumpsit, Quantum valebant, & Simul Comp.* And sometimes a *Mutuo dat & Accomodat*, (he lent and accommodated.) And the Cause of laying the Declaration so many Ways is, that you may be sure by your Proofs to hit on one of the Promises.

Middlesex. ff. A. B. complains of C. D. *A Decl. in Case, Indebitatus Assump. Quantum valebant, & Infimul Comput.* Gentleman, in Custody of the Marshal, &c. for that to wit, That whereas the aforesaid C. on the 1st Day of February, in the fourth Year of the Reign of the Lord George the Second, now King of Great Britain, &c. at (such a Place) in the said County of Middlesex, was indebted to the aforesaid A. in thirty Pounds of Good and lawful Money of Great Britain, for divers Wares and Merchandizes to the said C. by the same A. at the special Instance and Request of him A. before that Time sold and delivered, and being so thereof indebted, he the aforesaid C. in Consideration thereof, afterwards to wit, the same Day and Year, at the Parish (Place) aforesaid, in the County aforesaid, did take upon himself and to the same A. did then and there faithfully promise, that he the aforesaid C. would well and faithfully pay and content to the same A. the aforesaid thirty Pounds, when he should be thereto (thereof) required: And also whereas the aforesaid C. afterwards, to wit, (such a Day in the said 4th Year,

1st Count.
2d Count.

The Practising Attorney:

*Tear, &c.) in Consideration that the aforesaid A. had at the like Instance and Request of him C. sold and delivered to him C. divers other Goods and Merchandizes, the same C. did (thereupon) take upon himself and to the same A. did then and there faithfully promise, that he the same C. would likewise well and faithfully pay and content to the same A. when he should be there-to required, such Sums of Money as the said Wares and Merchandizes were reasonably worth, and the aforesaid A. in Fact sayeth, that the Wares and Merchandizes last mentioned, were reasonably worth thirty Pounds of lawful Mon-
 3d Count. nay of Great Britain, of which the aforesaid C. afterwards, to wit, the same Day and Tear, and at the Place aforesaid, had Notice; And also whereas the aforesaid C. afterwards, to wit, the 10th Day of February, in the Tear last a-
 4th Count. bovesaid, at the Place and in the County aforesaid, had accounted together with the same A. of and concerning divers Sums of Money to the same A. by the aforesaid C. before that Time due and owing, and then being in arrear and unpaid, (or, you may say) had accounted with the same Plaintiff, of and concerning divers Sums of Mo-
 5th Count. ney, to the same Plaintiff by the aforesaid De-
 6th Count. fendant before then due for divers Wares, (Goods) and Merchandizes, before that Time bought, had and received of the same Plaintiff, by the aforesaid Defendant.) And upon that Account the aforesaid C. was then and there found in Ar-
 7th Count. rearage towards the aforesaid A. in other thirty Pounds of like lawful Money of Great Britain. And being so found in Arrearage, the aforesaid C. in Consideration thereof, did afterwards, to wit, the same Day and Tear at the Place and*

in the County aforesaid, take upon himself, and to the same A. did then and there faithfully promise, that he the same C. would well and faithfully pay and content (satisfy) to the same A. the aforesaid thirty Pounds last mentioned, when he should be afterward thereunto required — yet the aforesaid C. in no wise regarding his several Promises and Assumptions, (Undertakings) aforesaid, so made in the Form aforesaid, but contriving and fraudulently intending the same A. craftily and subtilly to defraud and deceive in this Particular, the aforesaid several Sums of Money or any Penny (Part) thereof, to the said A. hath not yet paid nor in any Manner contented (satisfied) him for the same, altho' to do this, the aforesaid C. afterwards, to wit, the aforesaid 10th Day of February, in the Year aforesaid, at the Place and in the County aforesaid, was requested by the said A. But he hath hitherto altogether (denied) refused, and still doth (deny) refuse to pay that to him, or in any wise to content him for the same; from whence (or by reason whereof) the same A. saith that he is the worse, and hath Damage to the Value of, &c. and thereof he brings his Action, &c.

An *Indebitat. Assump.* (being indebted he He indebted promised) is where one is legally indebted promised unto another in any certain Sum; the Law creates a Promise to pay it. A *Quantum valebant*, (as much as they are worth) where Goods, Provisions, &c. are supplied for the Use of another; and where Goods and Wares are delivered by Tradesmen, at no certain Price. And an *Insimul Computasset*

The Practising Attorney:

is where the Parties have reckon'd or accounted upon the Matter in Dispute.

*For Money
borrowed, &c.*

If your Declaration be for Money borrowed, say, *For that, to wit, &c. for Money by the aforesaid C. before that Time borrowed, had and received of the aforesaid A. and being as yet unpaid and unsatisfied, &c.*

Easter, the 4th of King George the 2d.

*A Declaration
on a promissory
Note, indorsed
to a third Per-
son on the Stat.*

Midd. ff. J. C. Complains of G. J. in Custody of the Marshal, &c. for that, to wit, that whereas the aforesaid G. after the first Day of May, in the Tear of our Lord one Thousand seven Hundred and five, to wit, on the 27th Day of December, in the Tear of our Lord One Thousand seven Hundred and thirty, at the Parish of St. Clement Danes, in the County of Middlesex, made his certain Note in Writing called a promissory Note, with his proper Hand subscribed thereto, bearing Date the Day and Tear abovesaid, and then and there delivered the same Note to one E. B. by which said Note the aforesaid G. promised to pay to the aforesaid E. B. (by the Name of Mr. E. B.) or to his Order, the Sum of six Pounds within 2 Months after the Date of the same Note being for Value received, as by the said Note manifestly appears; and the aforesaid Sum of Money mentioned in the aforesaid Note or any Parcel thereof being not paid or satisfied to the said E. B. he the said E. B. afterwards, to wit, the same 27th Day of December, in the Tear of our Lord 1730 abovesaid, at the Parish aforesaid, in the County aforesaid, by a certain Indorsment in Writing then and there made

on the said Note, and then and there subscribed with the proper Hand of him E. B. assigned the foresaid Note to the before mentioned J. and by the same Indorsment ordered and appointed the foresaid G. to pay to the same J. the foresaid Sum of Money in that Note specified, according to the Form and Effect of the same Note; whereof the foresaid G. afterwards, to wit, the Day and Year last aforesaid, at the Parish aforesaid, in the County aforesaid, had Notice: By reason of which said Promises, and also by Force of the Statute in such Case made and provided, the same G. became chargeable (liable) to pay to the foresaid J. the same Sum of Money mentioned in the foresaid Note, according to the Form and Effect of the same Note; and the same G. being so chargeable in Consideration thereof, did afterwards, to wit, the Day and Year last aforesaid, at the Parish aforesaid in the County aforesaid, assume upon himself, and to the same J. did then and there faithfully promise that he the foresaid G. would well and faithfully pay and content to the same J. the foresaid six Pounds last mentioned, when he should be thereunto afterwards required, yet the foresaid G. in no wise regarding his several Promises and Assumptions, (Undertakings) aforesaid, so made to the said John in the Form aforesaid, but contriving and fraudulently intending the same J. in this Particular, craftily and subtilly to Deceive and Defraud, hath not yet paid the foresaid several Sums of Money, nor any Penny thereof to the same J. nor any wise contented satisfied him for the same, (altho' to do this the foresaid G. afterwards, to wit, the 28th Day of February, in the Year of

The Practising Attorney:

of our Lord 1730 above said, and oftentimes afterwards at the Parish above said, in the County above said, was requested by the foresaid J.) but hitherto hath wholly refused, and still doth refuse to pay that to him, or in any wise to content him for the same, to the Damage of him J. 20l. and thereon he brings his Suit, &c.

A Declaration
on a Quantum
Meruit (as
much as he de-
served for
Cure of a
Wound.
1st Count.

Devon. ss. A. B. complains of C. D. in Custody of the Marshal, &c. For that, to wit, that whereas the foresaid A. (such a Day and Year at such a Place) in the County above said, at the special Instance and Request of the said C. had cured him C. of a certain Wound then being in his Head, he the said C. took upon himself, and to the same A. did then and there faithfully Promise that he the same C. would well and faithfully pay and content, (satisfy) to the foresaid A. when he should be afterwards thereunto required, such Sums of Money as the foresaid A. should reasonably deserve to have for the Cure of such Wound above said, and the foresaid A. in Fact saith that he the said A. giving Faith to the foresaid Promises and Undertaking of the said C. made in the Form above said, did afterwards, to wit, (such a Day and Year, at such Place) above said, in the County of D. above said, Cure the foresaid C. of the Wound above said, and for that Cure did reasonably deserve to have ten Pounds of lawful Money of Great Britain; and thereof did then and there give Notice to the same C. And also whereas the foresaid C. afterwards, to wit, (the same Day, Year, Place and County again repeated) above said, was indebted to the same A. in other ten Pounds of like

2d. Count.

like lawful Money, for divers Medicines, Plaisters, Oyntments, and other Wares, to the same C. by the foresaid A. before that Time sold and delivered; and the foresaid C. being thereof indebted to the same A. be the foresaid C. in Consideration thereof, afterwards to wit, the same Day and Year last above-mentioned, did take upon himself, and to the same A. did then and there faithfully promise, that be the same C. would well and faithfully pay and content (satisfy) to the said A. the foresaid 10 l. when he should be thereto afterwards required; yet the foresaid C. in no wise regarding the several Promises, &c. made in the Form aforesaid; but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said A. in this Particular, the foresaid 10 l. or any Penny thereof hath not yet paid, &c. altho' be the said C. hath been often requested to do it by the said A. to wit, &c. But the said C. hath denied and still doth deny, &c. (as in the foregoing Precedents.)

Note; a Quantum Meruit (as much as he hath deserved) may be brought in any Case where one Man retains another to do any Work, &c. and no certain Agreement is made for the same; the Law implies he shall be paid for it to its Worth.

A. B. Executrix of the Testament and last Will of W. B. Gentleman deceased, complains of C. D. in Custody of the Marshal, &c. For that to wit, that whereas, (such a Day, Year and Place, &c.) In Consideration that the foresaid W. in his Life-Time, being an Attorney of

A Declaration on behalf of an Attorney's Executor for Fees, See afterward of Declarations by and against Attorneys.

The Practising Attorney:

the Court of the said Lord the King, before the King himself, (the said Court being then held at Westminster in the County of Middlesex; the foresaid W. by the space of 3 Terms, between or from such a Day and Year to such a Day, &c.) had prosecuted and defended several Suits in the Court of the said Lord the King, before the King himself; (the same Court then being at Westminster aforesaid) and had lay'd out and expended divers Sums of Money in and about those Suits, he the foresaid C. did take upon himself, and to the foresaid W. in his Life-Time, then and there faithfully promised, that he the said C. would well and truly pay and satisfy to the said W. whenever he should be thereunto required, all such Sums of lawful Money of Great Britain, as the aforesaid W. had lay'd out and expended, and also all other Sums of like Money, which the foresaid W. should reasonably deserve to have for his just Fees, and for his Work and Labour by him used and employed, in and about the Prosecution and Defence of the several Suits aforesaid; and she the said A. in Fact saith, that (the Day and Year,) &c. abovesaid, at, &c. aforesaid, the foresaid W. expended and laid out the Sum of 20 l. of lawful Money of, &c. in and about the Prosecution and Defence of those several Suits aforesaid, and then and there had reasonably deserved to have for his just Fees, and for his Work and Labour by him so as aforesaid, used and employed in and about the Prosecution and Defence of those several Suits, the Sum of 7 l. and Upwards of like lawful Money, whereof the said W. in his Life-Time did then and there give Notice to the said C. And also whereas afterwards

afterwards, to wit, the (Day and Tear) above-
 said, at, &c. aforesaid, the foresaid C. was in-
 debted to the foresaid W. in his Life-Time in o-
 ther 20 l. of like lawful Money, for such a Sum
 of Money by the said W. in his Life-Time, at
 the special Instance and Request of the foresaid
 C. laid out and expended in and about the Pro-
 secution and Defence of several other Suits in the
 foresaid Court, and also in other seven Pounds
 for Fees, due to the said W. in his Life-Time,
 and for Work and Labour by him W. in his Life-
 Time done, used and imployed at the like Instance
 and Request of the said C. in and about the
 Prosecution and Defence of the said Suits last
 mentioned; and being so indebted, the foresaid C.
 in Consideration thereof did afterwards, to wit,
 the same Day and Tear last mentioned, at,
 &c. aforesaid, take upon himself and to the said
 W. in his Life-Time then and there faithfully
 promised, That he the foresaid C. would well and
 faithfully pay and content to the said W. when he
 should be thereto afterwards required, the said se-
 veral Sums of Money last mentioned. Yet the
 foresaid C. not regarding his said several Pro-
 mises and Assumptions aforesaid, but contriving
 and fraudulently intending the foresaid W. in
 his Life-Time, and her the said A. since his
 Death, craftily and subtilly to deceive and de-
 fraud in this Particular, the foresaid several Sums
 of Money, or any Part thereof, to the said W. in
 his Life-Time, or to the said A. since his the said
 W.'s Death, hath not yet paid, nor to the said
 W. in his Life, or to the said A. since his
 Death, in any manner hitherto contented (satis-
 fied) altho' he the foresaid C. to do this hath been
 oftentimes requested by the said W. in his Life-
 time,

The Practising Attorney :

time, and by the said A. since his Death, to wit, (such a Day and Year at such a Place) aforesaid : Whereof the said A. saith she is the worse, and has Damage, &c. and the foresaid A. brings here into Court the Letters Testamentary of the last Will of the foresaid W. whereby it sufficiently appears to the Court that the said A. is Executrix of the last Will of the foresaid W. and hath the Execution thereof, &c.

A Declarati-
on of Slan-
der, for Words
spoken against
an Earl.

Middlesex ff. The Right Honourable A. Earl of B. one of the Peers and Nobles of this Kingdom of Great Britain, who sues as well for the Lord the King, as for himself, complains of C. D. in Custody of the Marshal of the Marshalsea, for that to wit, That whereas the same A. Earl of B. (such a Day and Year) and long before, and continually from thence hitherto was and still is one of the Peers and Nobles of this Kingdom, and had and still hath a Voice and Place in the Parliament of the said Lord the now King of Great Britain, as one of the Peers of this Realm ; yet the foresaid C. D. contriving and maliciously intending against the Form of the Stat. in such Case lately made and provided, to stir up great Scandals of the foresaid Earl, from whence great Discord may arise between the foresaid Earl and other Peers and Nobles, and others, the Subjects of the said Lord the King of this Kingdom of Great Britain, the foresaid (Day, Year, Place and County) aforesaid, having Discourse with one F. F. of and concerning the foresaid Earl, these false, feigned, scandalous and opprobrious English Words following, in the Presence and Hearing of divers faithful Subjects of the said Lord the King, did then
and

and there falsly, maliciously and scandalously
 Speak, Utter, Deliver and Publish, to wit, the
 Earl of B. (meaning the foresaid Earl) is a
 pitiful Man and no Body will take his Word
 for any thing, &c. By Pretext of which said
 speaking, uttering, declaring and publishing of
 the said false, feigned and scandalous English
 Words, be the said Earl did undergo and suffer
 great Loss and Depravation of his Honour and
 Esteem among the Peers and Nobles aforesaid,
 and other Subjects of the said Lord the now
 King, and also suffered the Displeasure of the
 said Lord the King towards him the said Earl;
 and also diverse great Discords and Scandals
 within this Kingdom of Great Britain, between
 him the said Earl and diverse other Peers and
 Nobles, and other Subjects of the said Lord the
 King, have arisen within this Kingdom, and
 daily more and more are likely to arise, to the
 great Disiurbance of the Tranquility of the same
 Kingdom, &c. In Contempt of the said Lord the
 now King, and to the great Scandal and Grie-
 vance of him the said Earl, and against the
 Form of the Statute aforesaid, to the Damage
 of him the said Earl (who sues as well for, &c.)
 1000 l. and thereupon the same Earl, as well
 for the Lord the King, as for himself, brings
 his Suit, &c.

Hereby it appears that in Actions of Scan-
 dalum Magnatum, the Plaintiff may prosecute in
 the Name of the King, and in his own Name;
 and so he shall recover Damages, and the
 Defendant be otherwise punished: But if the
 Slander be published in Nature of a Libel,

it is punishable by Indictment, Fine and Imprisonment.

*A Decl. in
Trespafs, for
breaking a
Man's Close,
&c.*

Midd. ff. A. B. Complains of C. D. in Custody of the Marshal, &c. For that, That he the said C. the 1st Day of August, in the 4th Tear of the Reign of the Lord George the Second, now King of Great Britain, &c. with Force and Arms, to wit, with Clubs, Staves, &c. the Close of him A. called, &c. at H. &c. broke and Entred, and the Grasse of him A. to the Value of one hundred Shillings, then and there growing, with certain Beasts, to wit, with Horses, Cows, Hogs and Sheep, eat up, trod down and consum'd, and continued the said Trespafs at diverse Days and Times, in so eating up, treading down and consuming the Grasse of him A. there growing, from the said first Day of August in the Tear aforesaid until the first Day of October, then next following, and other Enormities then and there did to him to the grievous Damage of him A. and against the Peace of the said Lord, the now King. From whence the said A. saith, That he is the worse, and hath Damage to the Value of 40l. and thereof he brings his Action, (or Suit) &c.

*A Decl. in
Assault and
Battery.*

Kent, ff. A. B. Complains of C. D. in Custody of, &c. of that, That he the said C. the 1st Day of May (in such a Tear, at such a Place, &c.) with Force and Arms, to wit, with Swords, Staves and Knives, made an Assault upon him A. and him then and there did beat, wound, and evilly Treat, so that his Life was greatly despaired of; and other Enormities, then and there did to him against the Peace of
the

the said Lord, the now King : To the Damage of him A. 20 l. and thereof he brings his Suit, &c.

For a Battery and Imprisonment, say, — Battery and Made an Assault upon him A. and him A. did Imprisonment. then and there Beat, Imprison, and evilly Treat, and him the said A. in Prison, without any reasonable Cause, against the Will of him A. and against the Laws of this Kingdom, for a great (long) time, to wit, for the Space of two Days continued and kept; and other Enormities, &c. (as above)

Kent, ff. A. B. Complains of C. D. in A Decl. for a Custody of the Marshal, &c. of (for) that, violent Assault and Battery. That he (such a Day and Year) with Force and Arms, to wit, with Swords, Daggers, Staves, Clubs, Knives, &c. in and upon the same A. at, &c. in the County aforesaid, made an Assault, and him A. did then and there beat, wound, and evilly Treat; and struck one Blow so violently on the Head of the said A. that the said A. by the Force of that Stroke fell to the Ground; and the said C. him the said A. so lying on the Ground did with many Strokes beat with his Fists, and kick with his Feet on his the said A.'s Face; Belly and Sides; so that the said A. lay (for) as one Dead; and by Reason of the said Strokes for a great while, to wit, for the Space of three Months then next following, was dangerously ill, and (remained) continued in great Peril of the Loss of his Life; and other Enormities to him A. he (the said C.) then and there did, against the Peace of the Lord the King; to the Damage of him A. 100 l. &c.

Michaelmas, the 10th of King George.

*A Declaration
for taking a-
way and car-
nally knowing
the Plaintiff's
Wife.*

*Note; &c.
may be tran-
slated, and
the Rest.*

Lond. ff. J. T. Complains of S. J. in Custody of the Marshal, &c. of that, That the aforesaid S. the 10th Day of July in the 9th Year of the Reign of the Lord George, now King of Great Britain, &c. with Force and Arms, in and upon Sarah the Wife of him John, at London aforesaid, to wit, in the Parish of the Blessed Mary of the Arches, in the Ward of Cheap, made an Assault, and her (the said) Sarah beat, and evilly treated; and also the same Sarah took, carried away, ravished and carnally knew; and her from the same John for a great Time, to wit, by the Space of 4 Years, against the Will of him (the said) John detained, whereby the same John the Comfort, Fellowship, Assistance and Aid of her (the said) Sarah, for the whole Time aforesaid, lost, and was deprived of; and other Enormities (Hurts) to the same Sarah, he did (brought) to the great Damage of him John, and against the Peace of the said Lord the King; from whence, (or for which) the same John says, That he is hurt (or harm'd) and has a Damage to the Value of 500l. and thereof he brings his Suit, &c.

J. Burges by R. Smith	} Pledges of	{ J. Doe.
for the Plaintiff.		
T. Basset for the De-		
fendant.		

And

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And under-written a Warrant of Attorney
for the Defendant, viz.

Mr. Bassett,

I desire you will plead for me to this Declaration Not guilty; and for your so doing this shall be to you a sufficient Warrant, dated 28th of January, 1723.

Witness,

Sam. Jackson.

J. Hitches.

The like Declaration against a Prisoner.

Lond. ff. L. C. *Complains of J. E. in Custody of the Marshal of the Marshalsea of the Lord the King, before himself the King being, of that, That he the said John the 1st Day of March, in the 10th Year of the Reign of the Lord George, now King of Great Britain, &c. and diverse Days and Times then following, until the 18th Day of October, in the 11th Year of the Reign of the said Lord the King, with Force and Arms, on and upon Martha the Wife of the said Luke, at London aforesaid, to wit, in the Parish of the Blessed Mary of the Arches, in the Ward of Cheap, made an Assault and her (the said) Martha then and there ravished, compressed, debauched, and carnally knew; and the same Martha from the same Luke for a long time, to wit, for the Space of six Months, there (thence following) detained, whereby the same Luke, the Comfort, Consortship and Aid of his said Wife for the whole Time aforesaid, lost, and was deprived of; and other Enormities (Hurts) to the same Martha he did, (brought) to the great Damage of him (the said) Luke;*

Note; ff. signifies Scilicet, or to wit.

The Practising Attorney:

Luke ; and against the Peace, &c. (as above)
to his Damage 1000 l. and thereof, &c.

Basset by Burch for	}	Pledges of	{	J. Doe				
the Plaintiff.								
The Defendant in					}	prosecuting	{	R. Roe
Custody.								

Note ; Affidavit must be made and filed with
the Declaration, That a Copy hereof was left
with the Prisoner, or at the Gaol, pursuant to
the Statute.

Entry of an Issue in B. R. in an Action
for lying with the Plaintiff's Wife.

In the Term of Saint Hillary, in the 3d
Year of the Reign of the Lord George
the Second, now King of Great Britain,
&c. Roll the Hundred and Fifth.

VENTRIS.

Lond. ff. It is to be remembred, That other-
while (heretofore) to wit, in the Term of St.
Michael last past, before the Lord the King, at
Westminster, came J. T. by T. S. his Attor-
ney, and brought here into the Court of the said
Lord the King then there his certain Bill against
T. K. in Custody of the Marshal of the Marshal-
sea of the Lord the King, before him the King,
being of a Plea of Trespass and Assault ; and
there are Pledges of prosecuting, to wit, John
Doe and Richard Roe ; which Bill indeed
(truly) follows in these Words, ff. London, ff.
J. T. Complains of T. K. in Custody of the
Marshal, &c. of that, That, &c. (and so set
forth the Matter of Fact, and Place, and
Time of detaining the Wife in manner as a-
bove to the Words) and thereof he brings his
Suit,

Note ; ff. is
to wit.

Suit, &c. (and then begin a new Line for the Plea thus,)

And now at this Day, to wit, Thursday next after the Octaves, i. e. the 8th Day of St. Hillary (i. e. the 1st of the Term) in this same Term, until which Day the said T. K. had Leave (License) of imparling to the Bill aforesaid, and then to answer, &c. before the Lord the King at Westminster, came as well the said J. T. by his Attorney aforesaid, as the aforesaid T. K. by B. B. his Attorney; and the same T. K. defends the Force and Injury, at what Time, &c. and says, That he is in nothing Guilty of the Trespass and Assault aforesaid; so as the aforesaid J. T. above against him Complains; and of this he puts himself upon the Country, and the foresaid T. likewise, &c. Therefore let a Jury come thereupon before the Lord the King at Westminster such a Day, (i. e. the Day whereon the Venire is to be returned) to take Knowledge, &c. because as well, &c. The same Day is given to the Parties aforesaid, there (to appear,) &c.

Upon a Copy of this Issue left with the Defendant's Attorney, a Notice of Trial is usually endors'd thus,

Mr. B.

Take Notice of Trial in this Cause for the last Sitting in London, within this present Hilary Term, which will be on Tuesday the 10th of Februry next,

From Yours B. B. for the Plaintiff.

29 January,

1730.

Michael.

Michaelmas, the 3d Tear of King George 2d.

*Another like
Declaration
laying the
Fact divers
Ways.*

Midd. ff. R. H. Complains of W. K. in Custody of the Marshal, &c. For that, That the aforesaid W. with Force and Arms, &c. at the Parish of St. Clements Danes in the County aforesaid upon P. the Wife of him (the said) R. made an Assault, and her then and there ravished, compressed, debauched, stupravit, and carnally knew, whereby the same R. lost, and was deprived of the Comfort and Society of his Wife aforesaid; and other Enormities to her he did, to the great Damage and Hurt of the said R. and against the Peace of the Lord George the second, now King of Great Britain, &c. And also whereas the said W. the 1st Day of June, in the Tear of our Lord 1729. and at diverse other Days and Times (Turns) between the said 1st Day (of June) and the second Day of July, in the Tear aforesaid, with Force and Arms, &c. upon her the said P. the Wife of him R. at the Parish aforesaid, in the County aforesaid, made an Assault, and her (the said) P. then and there ravished, compressed, debauched and carnally knew; whereby (the said) R. the Comfort and Society of his Wife aforesaid, by the whole Time aforesaid, lost, and was deprived of; and other Enormities (Hurts) to her he did, to the great Damage of him (the said) R. and against the Peace of the said Lord George the second, now King, &c. From whence (for which) the said R. says, that he is worsted, (hurt) and has

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has Damage to the Value of 500 l. and from
thence, (thereof) he brings his Suit,

M. for the Plain- tiff.	} Pledges of { J. Doe prosecuting. { R. Roe
B. for the De- fendant.	

Trespass against the Person of a Man is of *Trespass*.
several Kinds: As menacing or threatening;
assaulting or setting upon another to beat
him: Battery, where one doth actually beat
another; Maihem, where one doth take from
another the Use of his Limbs; Imprison-
ment, where a Man is restrained from his
Liberty. Then there is *Trespass* against a
Man's Goods, &c. his Wife, Children, Ser-
vants, Horses, Beasts, Poultry, Fish, &c.
and also Lands, Houses, Trees, Grass, &c.

If one threaten to beat me, whereby I
dare not follow my Business, and I have Loss
thereby, I may have this Action. If a Person
strike at me, or hold up his Weapon to strike
me, being within his Reach, or thrust me;
or cast Stones at me, tho' he does not hit
me, or throw Drink in my Face, or on my
Clothes, &c. for any of these Action will lie.

Dorset ff. A. B. Complains of C. D. in *A Decl. in*
Custody of the Marshal, &c. for that, to wit, *Trover and*
That whereas the foresaid A. (such a Day and *Conversion.*
Year) at (such a Place) in the County afore-
said, was possessed of Goods and Chattles, to
wit, (naming the Goods) in the whole amount-
ing to the Value of 40 l. as of his own proper
Goods and Chattels; and being so possessed, the
same

same A. afterwards, to wit, such a Day, &c. in the Tear aforesaid, at, &c. aforesaid, in the County aforesaid, did casually lose, and was deprived out of his Hands and Possession, the Goods and Chattels aforesaid, which said Goods and Chattels afterwards, to wit, the foresaid Day, &c. at, &c. aforesaid, in the County aforesaid, came to the Hands and Possession of the foresaid C. by finding; yet the foresaid C. knowing the Goods and Chattels aforesaid to be the proper Goods and Chattels of him A. and of Right to belong and appertain to him A. (yet) contriving and fraudulently intending, craftily and subtilly to deceive and defraud the same A. in this Particular, hath not delivered the Goods and Chattels aforesaid, to the said A. though thereunto he hath been oftentimes requested by the said A. But the foresaid Goods and Chattels afterwards, to wit, (such a Day at such a Place) in the County aforesaid, converted and disposed of to his own proper Use; to the Damage of him A. 60 l. and thereupon, (or thereof) the said A. brings his Suit, &c.

Trover, &c.

Trover and Conversion is a special Action of the Case, and lies against a Man who has got the Possession of Goods of another, and refuses to deliver them upon Demand; and where *Detinue* may be brought this Action will lie. It is for the Recovery of the Things and Damages for the Conversion: The Demand and Denial is necessary to prove the Conversion: And the Things must be set down in the Declaration, but the Time of Conversion is not needful.

In

In this Action the Defendant cannot wage his Law.

A Declaration in Covenant in B. the King's Bench, runs in this Form, viz.

Dorset, ff. W. S. complains against A. H. ^{On a Covenant in Articles to pay Money.}
in Custody of the Marshal, &c. of a Plea of Covenants broken, for that, to wit, that whereas by certain Articles of Agreement, indented and made at London, (to wit) in the Parish of the Blessed Mary, in the Arches in the Ward of Cheap, London, made on the first Day of May, in the 4th Year of the Reign, &c. It was amongst other Things concluded and ageeed, by and between the aforesaid W. by the Name of W. S. of &c. of the one Part, and the aforesaid A. H. by the Name of A. H. of &c. of the other Part, which other Part; sealed with the Seal of the aforesaid A. bearing Date the same Day and Year, the said W. brings here into Court; by which said Articles of Agreement, It was agreed between the said W. and A. their Executors, Administrators, and Assigns, That whereas, &c. and so recite the Indenture, or the particular Cause wherein the Breach is to be assigned, together with the Penalty annexed thereto, as by the aforesaid Articles of Agreement indented doth more fully appear. And the same W. the Plaintiff in Fact saith, that the aforesaid Articles of Agreement indented were sealed at London, within the Parish aforesaid, on the first Day of May, in the Year aforesaid. And the aforesaid W. doth further in Fact say, that the aforesaid A. neither on the said first Day of May, in the 4th

Note; the Covenant was to be perform'd in Lincolnshire.

The Practising Attorney:

4th Tear aforesaid, (being the Day of the sealing of the aforesaid Articles of Agreement indented) or at any Time afterwards hitherto, although thereunto often required by the said W. hath not paid to the aforesaid W. the said Sum of ——— And the said W. further in Fact saith, that the aforesaid A. although thereunto often required by the said W. hath not performed all or any of the Articles of the Agreement in the aforesaid Indenture contained, which on the Part and Behalf of the aforesaid A. ought to be done and performed according to the Form and Effect of the Indenture aforesaid, but to do or perform the same hath hitherto denied and refused, and still doth deny and refuse, from whence the said W. saith, he is the worse, and hath Damage to the Value of, &c.

*Covenant on a
Bill of Sale,
&c. and War-
ranty.*

Middl. ff. A. B. late of C. in the County aforesaid, Gentleman, complains of E. F. in the Custody of the Marshal, &c. of a Plea of Covenants broken, for that, to wit, the foresaid E. (such a Day, Year, and Place) by his certain Writing, seal'd with his Seal, and here in the Court of the said Lord the King, before the King himself produced, bearing Date the same Day and Tear, for and in Consideration of the Sum of Forty-eight Pounds Ten Shillings, beforehand paid to him E. by the foresaid A. had bargain'd, sold, and deliver'd to the said A. certain Goods and (Merchandizes) Things mentioned in a Schedule to the same Writing annexed, To have and to hold to the said A. his Executors, Administrators, and Assigns, to the sole Use of the said A. his Executors, Administrators, and Assigns, for ever. And be the said E. by that Writing,

Writing, had covenanted and agreed with the same A. that he the said E. would warrant and Defend for ever the said bargain'd Premisses to the said A. his Executors, Administrators, and Assigns against all Persons whatsoever, as by that Writing, with the Schedule annexed, here brought into this Court, doth more fully appear. And the same A. in Fact saith, that the Premisses aforesaid so bargained, and sold, and in the Schedule aforesaid mentioned, are certain Goods and Chattels in the House of the aforesaid E. situate in the aforesaid Town of D. and in the Schedule aforesaid particularly mentioned, that is to say, (and so set them forth as in the Inventory.) And the same A. in Fact saith, that the aforesaid E. at the Time of the Sale of the foresaid Premisses had nothing in Interest, Property, or Possession of, in, or to the Goods and Things aforesaid, or any Parcel thereof; but the true Property therein, and thereof, was at that Time in one J. H. by whom the said A. was removed from, and put out of the Possession of the Premisses aforesaid by due Course of Law, &c. And so the aforesaid E. although often required thereunto, hath not kept or performed his Covenant aforesaid so made with the aforesaid A. in that Particular, but hath broken the same, and hath altogether refused, and still doth refuse to perform the same, to the Damage of him A. fifty Pounds, and thereupon he brings his Suit, &c.

Dorset, ff. J. M. Was summoned to answer A Declaration to R. S. of a Plea why he hath taken the Beasts in Replevin. (Cattle) of him R. and those hath unjustly detained against Gage and Pledges, &c. and
M whereof

The Practising Attorney:

whereof the same R. by G. E. his Attorney, complains that the aforesaid J. M. the twentieth Day of June, in the fourth Tear of the now Lord the King, at B. in a certain Place called M. within the County aforesaid, did take the Cattle, to wit, twenty Cows of him R. and them bath unjustly detained against Gage and Pledges, until, &c. Whereof the aforesaid R. saith he is the worse, and bath Damage to the Value of twenty Pounds; and thereupon he brings his Suit, &c.

An Avoowry
thereto for
Rent Arrear
on a Lease.

And the aforesaid J. by R. E. his Attorney, comes and defends the Force, and Injury, when, &c. and well avows the Taking of the Cattle aforesaid, in the foresaid Place wherein, &c. and justly, &c. because he saith, that before the aforesaid Time, wherein the Taking of the aforesaid Cattle is supposed to be done, and at the Time wherein they were so taken, he himself was seized of one Messuage, forty Acres of Land, six Acres of Meadow, twenty Acres of Pasture, and four Acres of Wood, with the Appurtenances in B. aforesaid: Whereof the aforesaid Place wherein, &c. is, and at the aforesaid Time wherein, &c. was Parcel in his Demesne as of Fee; and being so seized thereof before the aforesaid Time wherein, &c. to wit, the eighteenth Day of June, in the first Tear of the Reign of the now King, at B. aforesaid, did demise the aforesaid Tenements with their Appurtenances: Whereof, &c. to the aforesaid R. R. to have and to occupy to him, and his Assigns, from the Feast of St. Michael the next following, to the End and Term of seven Tears from thence next following, yielding and paying therefore yearly to the aforesaid J. M.

ten

ten Pounds at the Feast of the Annunciation of St. Michael the Archangel, by equal Portions. By Virtue of which said Demise the aforesaid R. before the aforesaid Time wherein, &c. in and upon the Tenements aforesaid, with their Appurtenances, whereof, &c. entered, and was thereof possessed: And because fifteen Pounds of the Rent aforesaid for one whole Year, and the Half of a Year ending at the Feast of the Annunciation next before the aforesaid Time wherein, &c. were in Arrear, and not paid to the said J. M. at the same Time wherein, &c. the same J. M. for the said fifteen Pounds of that Rent so being in Arrear to the said J. doth well avow the Taking of the Beast aforesaid in the aforesaid Place wherein, &c. and justly, &c. as in Parcel of the Tenement aforesaid, which, with the Appurtenances, were bound and charged to be distreined on by the said J. in the Form aforesaid.

And the aforesaid R. saith, that the aforesaid J. by Reason of the Allegations aforesaid, cannot justly avow the Taking of the Cattle aforesaid, in the aforesaid Place, wherein, &c. because he saith, that the aforesaid fifteen Pounds of the Rent aforesaid at the Time wherein, &c. was not in Arrear, or unpaid to the foresaid J. nor any Penny thereof, at the same Time wherein, &c. was in Arrear to the foresaid J. as the same J. hath in his Avowry aforesaid above alledged; and this he prays that it be enquired by the County; and the aforesaid J. likewise; therefore it is commanded to the Sberiff of D. that he cause to come here from the Day of St. Martin, (next) in fifteen Days, twelve Men, &c. by whom, &c. and who neither, &c. to take Knowledge, &c. because as well, &c.

Plea in Bar
that not Rent
is in Arrear.

Replevin.

A *Replevin* is grounded on a *Distress*, and is a Remedy provided that the Thing may remain with the first Possessor, upon his Security given, till the Right of distraining be made to appear: And the Party suing it, gives Security to pursue the Action, and return the Goods, Cattle, &c. again, if the Taking be adjudged lawful.

By Stat. 2 *W. and M.* where Goods are *distrained* for Rent, and the Tenant shall not in five Days after Notice replevy the same, the Person distraining with the Sheriff, Constable, &c. may cause them to be appraised, and sold to satisfy the Rent.

And by 8 *Ann.* where Goods are fraudulently convey'd from an Estate, they may be taken in *Distress* in five Days, wheresoever found.

Note; A *Distress* may be taken for Part of the Rent, where the Goods are not sufficient to satisfy it, and an *Action of Debt* for the Remainder; whereby both the Goods and Person are made liable.

A Declaration for an *Attorney* begins in this Form, viz.

For an Attorney.

London, ff. J. S. Gentleman, an *Attorney* of the Court of the Lord the King, being before the King himself, according to the Liberties and Privileges for such *Attornies* and other Ministers of the aforesaid Court, from the Time whereof the Memory of Man doth not exist, used and approved in the same (Court) being present

present here in Court, in his proper Person, complains of E. F. in Custody, &c.

A Declaration against an Attorney of the Court is thus:

Southampton, ff. A. B. complains of C. D. Gentleman, (an Attorney of the Court of the Lord the King, before the King himself) present here in Court in his proper Person. For that to wit, That whereas, &c.

See hereafter, of Proceedings against Privileged Persons.

Upon a *Latitat* in B. R. you may declare against the Defendant in several Actions; but in C. B. you must have for every Action one Original.

Of Pleas, Demurrers, Traverses, &c. in B. R.

PLEADINGS are all the Matters which *Pleas, &c.* come after the Declaration, as well on *what.* the Defendant's as the Plaintiff's Side, until the Issue in Law or Fact is joined. A *Demurrer* is where the Defendant saith, That the Plaintiff's Declaration is not sufficient for him to answer to: Or when the Defendant pleads, and the Plaintiff alleges Insufficiency in the Plea, but the Defendant says, 'tis Good; which is submitted to the Court. And a *Traverse* is a Denial of something
M 3 charg'd,

The Practising Attorney:

charg'd before, and is made by the Words *absque hoc*, &c. either as to the Matter or the Manner, or of the Day and Year, or Place alledged.

*General and
Special.*

All Pleadings are either *General* or *Special*. A general Plea is commonly made on a little Piece of 2d. stamp'd Paper, without Counsel's Hand, only the Defendant's Attorney's Name to it, as (In *Case*) thus: *He hath not promised per A. B. fol. so* (In *Trespass*) *Not Guilty, so* (In *Debt*) *He owes nothing, so* (In *Debt by Bond*) *'Tis not his Deed, &c.*

Special.

Special Pleas are drawn up in Form, setting forth the Matter pleaded at large, with an apt Conclusion to the Declaration or Action; and must be signed by Counsel, or they will not be received: They are of two Sorts, Pleas in *Abatement*, and in *Bar*. And in Personal Actions, as Debt, Accompt, &c. a Bar is perpetual; because the Plaintiff cannot have an Action of a higher Nature, but his only Remedy is by Error or Attaint: In a real Action, if the Defendant be barred, by Judgment upon Verdict, or on Demurrer, &c. he may commence an Action of an higher Nature, and try the same Right again.

*In Abatement
and Bar.*

In good Order of Pleading, a Man must plead. 1. To the Jurisdiction of the Court, 2. To the Person; first of the Plaintiff, and then of the Defendant. 3. To the Count. 4. To the Writ. 5. To the Action. And if the Defendant misorder any of these, he will lose the Benefit which the Law allows him.

*Order of
Pleading.*

It

It is a Rule in Law, that every Plea ought to answer the Matter which is charged upon the Defendant in the Declaration; and if Part of the Case be omitted, the Defendant may shew the Omission and Demurrer, &c. The Conclusion of a Plea or Replication, is a Summary of the Pleader's Prayer, which is to be congruous with the Matter percedent; and the Plaintiff's Replication must answer not only the Substance of the Defendant's Plea, but the Conclusion is to be opposite to the Conclusion of it.

As to Pleas either in Abatement or in Bar; when you plead to the *Jurisdiction* of the Court, you say, that the Place in Question is within such a Liberty. *Disability* of the Person; that the Plaintiff is an Alien, outlawed, excommunicate, &c. *Writs*, Variance between the Original and the Specialty, Declaration, &c. For that the Writ and Narr. are not warranted, &c. *Death* of Parties, That one of the Defendants died before the Writ, with Replication and Issue thereon; the Death of one Jointenant in Trespass. *Coverture*, that the Parry (Woman) was married at the Time of the Writ purchased. *Release*, For that the Plaintiff discharged Part of the Debt, after the Original purchased, &c. *Another Action* depending; *Replication by Fraud*, &c. Rejoinder that it is *vere & juste*, and traverses the Fraud; Sur-rejoinder and Issue upon the Fraud and Co-vin. To the *Action*, that the Bill is in Case, and ought to be in Account, &c. *Privilege*, for that the Defendant is one of the Clerks in Chancery, Exchequer, &c.

Pleas in General.

1 Sal. 1, 2.

*Pleas in
Abatement.*

A *Plea in Abatement* is very often merely Dilatory ; for it does not destroy the Action, but only stop it till the Obstacle is removed, in Case of Defects, as Excommunication, &c. On Misnomer, or naming the Defendant Executor when Administrator, the Plaintiff may have a new Action with paying Costs.

A *Plea in Abatement* of the Writ ought not to be received after the Defendant hath imparled ; for by imparling he admits the Writ to be good ; and if it be received, and the Plaintiff doth demur to it, the Demurrer is good. The Attorney for the Defendant must be cautious how he rejoins to the Plaintiff's Replication ; the usual Way is to demur to the Replication, and then the Judgment can be but a *Respondens Ouster*, whereupon the Defendant shall plead another Plea.

*General Plea
in Abatement.*

A *Plea in Abatement* is to begin, *That the Defendant ought not to answer to the Bill, &c. Quod Def. ad Billam, &c. Respondere non Debet.*— and conclude to the Declaration thus : *Whereof (or whereon) he prays Judgment of the Bill (or Declaration) aforesaid : And that that Bill be quash'd, &c.* If the Plaintiff be an Alien, say, *Whereupon he prays Judgment if the foresaid T. A. (the Defendant) ought to answer to the Bill aforesaid, &c.*

*Misnomer
pleaded.
1 Sal. 6. 8.*

And the foresaid T. by C. D. his Attorney, comes and defends the Force and Injury, &c. and prays Judgment of the Bill aforesaid, because he saith, That he the foresaid T. is named and called by the Name of, &c. And by the same Name, and Surname, from the Time of his Nativity hitherto hath always been called
and

and known, and not by the Name of T. A. as in the Bill aforesaid is above contained. And this he is ready to aver, whereof he prays Judgment, &c.

And the foresaid William B. saith, *That* Replication. for any Thing by him the said Thomas above in pleading alledged, his Bill aforesaid ought not to be quashed, because he saith, *That* the same T. is named and called, and on the Day of exhibiting the foresaid Bill, was named and called, as well by the Name of T. A. as by the Name of, &c. And he prays that this may be inquired by the Country.

If the Defendant's Attorney rejoins to the Replication, and the Plaintiff joins Issue, if it be found against the Defendant, the Judgment is final; and therefore the Attorney for the Defendant must be wary in these Cases.

In a *Plea in Bar*, the Defendant in the *Plea in Bar*. Beginning says, *That* the Plaintiff ought not to have or maintain his Action against him, and concludes to the Action, viz. He prays Judgment if he (the Plaintiff) ought to have or maintain his Action against him, &c.

A *Plea in Bar* may destroy the Plaintiff's Action for ever; as if the Defendant pleads a general Release, &c. And a *Plea in Bar*, is an Objection to the Plaintiff's Action, shewing some Cause why he ought not to have the same: It is either peremptory and perpetual, and totally destroys the Action of the Plaintiff, or it is temporary, and bears it only for some Time.

If the Defendant can have no Advantage in pleading in Abatement, or by demurring

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in Law, he may afterwards plead in Bar; and before he pleads any special Matter in Bar, he may plead in General. 1. A Release or Defeasance. 2. An Acquittance. 3. Acceptance of other Things. 4. Tender of Amends. 5. Concord or Accord. 6. Arbitrament. 7. *Auterfoits Bar*, or by former Judgment. 8. The Statute of Limitations. 9. Disability of the Plaintiff. 10. Privilege of the Defendant, or other Matter; for several Matters pleaded in Abatement may be also pleaded in Bar.

*Auterfoits
Bars.*

The Plea of *Auterfoits Bar*, (formerly Barr'd) is a Plea of the like Nature, with a Plea in Bar by former Judgment or Recovery. If Debt be brought on any Contract without Specialty, in which Wager of Law lies, 'tis a good Plea that the Plaintiff brought another Action for the same, wherein the Defendant waged his Law, and barred the Plaintiff. So it is an Action of the Case for the same Debt before, and recovered therein: And so in Case of Words, where the Defendant pleads a former Action brought for the same Words, and Verdict and Judgment thereupon.

Uncore Prist.

Uncore Prist (still ready) is also in Nature of a Plea in Bar, and used by a Defendant to save the Forfeiture of his Bond, being sued for a Debt due at a Day past; That he tendred the Money at the Day and Place, and that there was none there to receive it, and that he is now also ready to pay the same. This will save the Defendant from the Penalty of his Obligation; and if now the Plaintiff refuses to receive the Money, but takes Issue upon the

the Tender, and it be found against him, he loseth his Money for ever.

In Case of a single Bond, or Statute, or Tender & of a Recognizance acknowledged with a De- Refusal, &c. feazance for Payment of Money, their Tender and Refusal bars the Party for ever to recover it; and in this Case, the Defendant need not plead *Uncore Prift*: And so it is of a Bond with Condition to do a Collateral Act, as to stand to an Arbitrament, &c.

A *Protestando* is a Plea made Use of to *Protestando*. avoid double Pleading; it prevents the Party that makes it from being concluded by the Plea he is about to make, that Issue cannot be joined upon it; and it is also a Form of Pleading, where one will not directly affirm or deny any Thing alledged by another or himself. In the first Case, it is where a Man pleadeth a Thing which he dares not directly affirm, or that he cannot plead for fear of making his Plea double; as in Title to Land by two Descents, the Defendant must plead one of them, and put the Word *Protestando* (by *protesting*) instead of *Dicit*, as to the other, that such a one died seized, &c. And in the last Case, when one is to answer to two Matters, and by the Law he ought to plead but to one, then in the Beginning of his Plea he may say *Protestando*, (by *protesting*) that such Matter is not true, and then adds to his Plea, *pro Placito dicit*, for Plea saith, &c. and so he may take Issue upon the other Part of the Matter.

See the Stat.
4. Annæ cap.
16. ante.

Averments are of two Sorts, general and *Averments*. particular: A general Averment is the Conclusion of every Plea, Bar, or Replication, &c.

&c. containing Matters affirmed, which ought to be averred by these Words, *Et hoc paratus est Verificare*, (and this he is ready to aver) *&c.* A particular Averment is where a Thing is specially avowed; as where the Life of a Tenant for Life, *&c.* So of the Age of a Person, or that Places, Sums of Money, and Persons named are one and the same. The Use of an Averment is to ascertain that to the Court, which is generally or doubtfully alledged. But Averment doth not lie against a Record; nor of a Thing directly contrary to the Condition of a Bond; or where no Traverse can be taken.

Traverse.

If one will take a *Traverse* to a Declaration, he ought to traverse that Part of it, the doing whereof will make an End of the Matter for which the Plaintiff declares. Where the Defendant hath confessed, or given a particular Answer in his Plea to all the material Matters contained in the Declaration, there he need not take a Traverse; for when the Thing is answered, there needs no further Denial. And tho' in some Cases it's said there may be a Traverse upon Traverse; yet one Traverse is enough to make a perfect Issue.

*Puis Darre.
Con.*

The Plea *Puis Darrein Continuance*, (after the last Continuance) is sometimes in Abatement, and sometimes in Bar; and is where any Thing happens pending the Action, as that the Defendant dies, a Woman takes Husband, an Acquittance is given, the Plaintiff enters, *&c.* This Plea may be pleaded at any Time after Issue, and before Verdict. But a Man shall not have a Plea, after the last

last Continuance, unless such a Plea could not be made at the Time of the first Plea: And a Person shall have but one Plea of this Kind.

After a Defendant has pleaded in Abatement, and before he pleads directly in Bar, *Demurrers.* he may *demur* to the Count or Declaration; for when he is advised that the Declaration is insufficient in Law, as that the Fact is imperfectly set forth, or will not maintain an Action, &c. he may demur thereto, and refer the Points of Law that arise thereupon to the Judgment of the Court; which determines all such Questions of Law as arise on such Demurrers.

Demurrers are either *General* or *Special*; *General and Special.* General, without shewing any Cause, but only, *Quod breve vel Nar. vel Placitum, &c. Materiaque in eod'm content. minus sufficiens in Lege, &c.* A special Demurrer is where the Causes of demurring are particularly set down. And Demurrer may be by the adverse Party, to the Writ, Count, Declaration, Plea, Replication, &c. It is likewise sometimes to the Evidence at a Trial, Bills of Exception, Challenges of Array, &c.

In general Demurrers, the Causes are shewn in General thus; *That the Plea, &c. is repugnant, double, uncertain and wanteth Form, &c.* By the Stat. 4 & 5 *Anne.* the Causes of Demurrer are to be particularly set down: And want of Form is Cause of a Special Demurrer; but for Want of Substance a general Demurrer will still suffice.

All *Demurrers* alledge Insufficiency in the Judgment on other Party's Declaration, Plea, &c. and if *Demurrers.* Special, say that it ought not to be answered

ed for such and such Causes, and therefore prays Judgment : And if the Matter be found insufficient, Judgment is against him that join'd in Demurrer ; but if it appear sufficient, Judgment is given against the Demurrant. If the Demurrer be sufficient, and the other Party will not join therein, Judgment may be had against him by *Nihil dicit*, i. e. (*He saith nothing.*)

The Court will not allow of a Demurrer to delay Proceedings, or to put off a Trial ; but will give Judgment against the Party for his frivolous Demurrer. If the Points on a Demurrer are apparent and easy to determine, the Court will proceed to give Judgment upon it presently ; but if it be doubtful or difficult, they will take Time to consider of it, and give a Day to the Parties. And sometimes all the Judges of *England* are consulted.

Repleader
6 Mod. 2, 3.
102. Sed.
Quere?

No *Repleader* is allowed upon an impertinent or uncertain Issue ; nor after a Demurrer, without Consent of both Parties. After Issue is joined, which admits the Pleadings to be good, neither of the Parties can demur without Consent of the other, where the Issue goes to the Whole. A Demurrer once entered cannot be waved without Consent and Leave of the Court.

Replications.

A *Replication* is an Exception made by the Plaintiff to the Defendant's Plea or Bar : And herein the Plaintiff ought not to depart from his Count or Declaration. When the Replication doth neither confess and avoid, nor traverse the Matter of the Bar, it is naught, and the Defendant may demur to it.

Some-

Sometimes a faulty Bar is made good by Replication.

A *Rejoinder* is the Defendant's Exception *Rejoinders* or Answer to the Plaintiff's Replication. If the Defendant depart from his Plea pleaded in Bar, the Rejoinder is not good: Also the Defendant is not to rejoin in such Words as are not contained in the Replication or Plea. When the Defendant in Rejoinder pleads new Matter, he may conclude, *Et hoc paratus est Verificare*, for he ought to give the Plaintiff Liberty to come in with a Sur-rejoinder, and answer to it.

A *Sur-rejoinder* is a second Defence of the *Surrejoinders* Plaintiff's Declaration, and answers to the Rejoinder. If the Defendant makes an Answer to the Plaintiff's Rejoinder, that is called a *Rebutter*; and the Plaintiff's Reply thereto is called a *Sur-rebutter*, and after all these there may be a Demurrer, and Joinder in Demurrer.

The *Plea* of every Man is most strongly *Directions in all Pleas.* taken against himself. The Court will not direct any Person how to plead, though the Matter be difficult; because Counsel is to advise how to plead, and the Court is only to judge. Every Plea must be an issuable Plea, that it may be triable; and is to be direct, and pertinent, and not by Way of Argument. Pleas which only amount to the general Issue are not to be allowed; but the General Issue is to be entered. The Plea must answer all the Matter in the Declaration, or the Plaintiff shall have Judgment. In many Cases general Pleadings are allowed, and the Particular shall come on the other Side; as
of

See 4, 5.
Annæ cap. 16.
ante.

of Covenants the Defendant may generally plead Performance of all, &c. Surplusage will never make a Plea vicious, but where it is contrary to the Matter before. All Pleas ought to be single and certain; for a double Plea without leave of the Court is not good. Where a Thing rests in a Man's own Notice, he must plead it particularly. A general Allegation sufficeth, where one comes in by Act of Law; and a general Plea is good, where the Matter is infinite. All implied Circumstances need not be express'd in the Plea; but when any special or substantial Matter is alledged, it ought to be specially answered. General Estates in Fee-simple may be generally alledged; but the Commencements of Estates in Tail, and other particular Estates must be shewed. When a Count, Declaration, Bar, Replication, &c. are defective, as to Time or Place, it may be helped and made good by the Pleading of the adverse Party; but if it be insufficient in Matter, it cannot be helped. Where the Defendant pleads a dilatory and frivolous Plea, the Court will order him to plead such a Plea as he shall stand to, or to accept of a Demurrer to argue the Plea. When a dilatory Plea in Abatement is over-ruled, there shall be a *Respondeas Ouster*, (*Answer over or give a better Answer*) unless an Issue be joined upon it: But upon over-ruling of a Plea, pleaded in Bar, Judgment shall be given against the Defendant, for such a Plea is peremptory. Affirmative Pleas ought to conclude, *Et hoc paratus est Verificare*; (*and he is ready to averr*) where the Defendant pleads to Issue, the Conclusion shall be, *Et de hoc ponit*
se

se super Patriam, (and hereof he puts himself on the Country) and the Plaintiff replies, *Et hoc petit*, &c. And this he prays may be inquired by the County; if you plead to the Action, you must demand Judgment, *si Accon*, &c. and sometimes a Man is to plead *Et sic*, &c. as in Debt upon an Obligation by Durefs, &c. *Et sic non est Factum*; or *Et sic nil Debet*, and so it is not his Deed, or, and so he owes nothing, &c. on Payment.

These are the General Rules of Pleading; Pleas amended, to which I am to add, That a Plea may be amended, &c.

amended upon Leave of the Court, if it be but in Paper, and not entered upon Record, on Payment of Costs. And if the Plaintiff alters his Declaration, after the Defendant hath pleaded to it, the Defendant of Course may alter his Plea. Where a Plea is pleaded, and the Issue entered, and the Record made up to be tried at the Assizes, the Defendant cannot amend his Plea, without the Consent of the Plaintiff, and Order of Court.

Rules of Pleading.

By 4 & 5 Annæ, the Tenant or Defendant in any Action, &c. with Leave of the Court, may plead as many several Matters thereto as they shall think fit; but if such Matters, upon a Demurrer, be adjudg'd insufficient, Costs shall be given at Discretion of the Court. Costs shall be likewise given on a Verdict, upon any Issue, for the Plaintiff; unless the Judge certify the Defendant had probably Cause to plead such Matter. A Man can never plead any Thing afterwards, which he might have pleaded at first: If a Man have a Release, and an Action is brought against him, he cannot, after Pleading the General

N

Issue,

2.

Issue, make Use of this Release ; but he may at the *Nisi prius*, (except before) plead a Release, after the last Continuance of the Plea, made after Issue joined : But if it be made after Verdict, and before Judgment, it may not be pleaded, but an *Audita Querela* is to be brought upon it. The Attorney is to set his Hand to a General Plea, and pay for the Entry of it in the Plea-Book, or Judgment may be entered for want of a Plea. A foreign Plea, *i. e.* to the Jurisdiction, is to be put in upon Oath of the Defendant.

Rules to reply,
rejoin, &c.

If there be *Special Pleadings* in any Action by either Party, the Secondary will give Rules to reply ; and if the Defendant come to Issue, or there be a Demurrer, the Pleadings are to be given to the Clerk of the Papers, who gives a Rule in the Margent of the Book for the Defendant to rejoin, &c. and he is paid for making up the Book. Special Pleas are left with the Clerk of the Papers ; and when you are for the Plaintiff, you must take a Copy from the Clerk of the Papers of such Special Plea or Demurrer, for which you pay 6 *d.* per Sheet, and put in your Replication, and then carry your Declaration to him, and he will make up the Paper-Book, and write a Rule on the Side thereof.

Paper Books
made up.

This *Paper Book* is to be delivered to the Defendant's Attorney, and you are to call for it at the End of four Days to be entered ; and he must pay you for entring his Warrant of Attorney, and 10 *d.* a Sheet, for his Pleadings, &c. If the Defendant doth not receive the Paper Book, and return it to be

entred in four Days, then a *Non Prof.* (he hath not proceeded) may be entred. After the Rule to return the Paper Book is out, you may refuse to accept it without a new Rule (unless it be within one Day after;) but then you may detain it four Days more inclusive.

Paper Books and Demurrers, after they *Ingross'd, &c.* are returned, must be engrossed on a Roll, and made a Record, which is to be brought into Court; whereupon a Rule is drawn up, and the Cause set down to be argued; and then the Books are made up for the Judges, upon which the Counsel argue the Matters.

The Entry of a *Non Prof.* at the Bar is thus:

The Jury who were elected, tried and sworn *A Non Prof.* to speak the Truth of what is within contained, at the Bar. being at the Bar of this Court to give their Verdict of and upon the Premises, and conferring among themselves, or, they departed from the said Bar in order to confer, &c. and being returned to the Bar) in order to give their Verdict in this Particular, and the Plaintiff being thereupon solemnly called did not appear, nor any further prosecuted his Bill within written. Therefore, &c. Where the Postea is to be continued, as in other Cases.

A. B. was arrested at the Suit of C. D. by *A Non Prof.* Virtue of a Writ of Latitat, returnable before in an *Affion* the Lord the King at Westminster, &c. and the by Latitat. foresaid C. then and there brought into the Court of the Lord the King here his certain Bill against

The Practising Attorney:

gainst the foresaid A. in Custody of the Marshal, &c. of a Plea of Trespass, &c. which said Bill the same C. D. against the foresaid A. did afterwards no further Prosecute. Therefore there is adjudged to the same A. for his Costs and Charges, by him in this Particular appointed, (sustained) forty Shillings, according to the Form of the Statute, &c.

*A Non Prof.
for not declar-
ing.*

A. B. arrested at the Suit of C. D. personally appeared before the Lord the King at Westminster, (such a Day) prox' post, &c. And because the foresaid C. hath not declared against the foresaid A. B. within three Days from thence next following: Therefore according to the Form of the Statute there is adjudged to the same A. by the Court of the Lord the King, Twelve Shillings for his Costs and Charges, &c.

*A Non Prof.
for Want of a
Replication.*

And hereupon the foresaid Defendant prays, That the Plaintiff should Reply to his the Defendant's Plea; whereupon Day is given, &c. by the Court of the said Lord the King, now here to the foresaid Plaintiff, to Reply to the foresaid Plea of the foresaid Defendant, &c. and the foresaid Plaintiff, tho' solemnly demanded, (called) came not, nor any further prosecuted his foresaid Bill against the same Defendant. Therefore it is considered by the Court here, that the foresaid Plaintiff should take nothing by his foresaid Bill, but that he and his Pledges for the Prosecution, should go without Day, &c. And it is further considered, that the foresaid Defendant should recover against the foresaid Plaintiff, three Pounds for his Costs and Charges, by him in and about his Defence aforesaid sustained

ed in this Particular, and adjudged to him the Defendant by the Court of the Lord the King, now here according to the Form of the Statute in such Case thereupon lately made and provided, and (that) the said Defendant shall have Execution thereof (thereupon,) &c.

Postea scilicet tali Die & anno ven. hic in Cur. præd. Quer. per Attorn. suum præd. & fatetur se hic in Cur. ulterius Nolle Prosequi vers. præfat. Def. in Placito præd. Ideo idem Def. eat inde sine Die, &c.

A Nolle Prosequi, by a Plaintiff, after Issue.

Which in English is thus: Afterwards to wit, such a Day and Year, came here into Court, the foresaid Plaintiff by his Attorney aforesaid, and confesseth here in Court, That he will not any further Prosecute, (Proceed,) against the foresaid Defendant, in the Plea aforesaid; Therefore let the same Defendant go thereupon (thereof) without Day, &c.

Judgments on a Nol. prof. must be drawn up, and Costs signed by the Master, as those by Confession, Nil dicit, &c.

Forms of Demurrers.

And the foresaid Defendant by J. B. his Attorney, comes and Defends the Force and injury when, &c. and saith that the Matter in the Declaration aforesaid, above specified, is not sufficient in Law, for the foresaid Defendant to have maintain'd his Action aforesaid, against him the Defendant, and that he to that Matter, in Manner and Form above declared, has no Necessity, nor is he by the Law of the Land bound to Answer there-

A general Demurrer to the Count or Declaration.

The Practising Attorney :

to; and this he is ready to aver; whereupon, for Default of sufficient Matter, in that Declaration specified, the same Defendant prays Judgment, and that the foresaid Plaintiff be precluded, (barred) from having his foresaid Action against him this Defendant thereupon, &c.

Joinder in the said Demurrer And the foresaid Plaintiff for that that, he hath above declared sufficient Matter in Law to maintain his Action aforesaid, which he is ready to aver; which said Matter aforesaid the said Defendant hath not denied, nor in any wise answered the same, but altogether refuses to admit that Averment; prays Judgment, and his Debt aforesaid, together with his Damages by Occasion of the Detention of that Debt, to be adjudged to him.

A Demurrer to a Replication on a Sci. Fa. And the foresaid J. saith, that the Plea of the foresaid G. and F. in their Replication above pleaded, and the Matter in the same contained, is no way sufficient in Law to compel the said J. L. to Answer to the Writ of Scire facias aforesaid; To which said Plea in Manner and Form above pleaded, the same J. L. hath no Necessity, (Need,) nor is he by the Law of the Land bound in any Manner to Answer; and this he is ready to aver; wherefore for Default of a sufficient Answer of them the said G. and F. in this Particular, the same J. L. (as before) prays Judgment of the foresaid Writ of Sci. Fa. and that that Writ be quash'd, &c.

J. CHESHIRE.

The Joinder in Demurrer, thereupon. And the foresaid G. and F. say, that the foresaid Plea by them the said G. and F. in Manner and Form aforesaid, above in their Replication pleaded, and the Matter in the same contained, are good and sufficient in Law to com-

pel

pel him the said J. to Answer to the said Writ of Sci. Fa. of them the said G. and F. and that the said G. and F. are ready to Answer and prove the same Plea, and the Matter therein contained, as the Court shall award, &c. and because the foresaid J. J. hath not answered to that Plea, nor the same hitherto in any Manner denied, they the said G. and F. pray their Judgment and Execution against the foresaid J. J. of the Debt and Damages aforesaid, to be adjudged to them by Virtue of the Recognizance aforesaid, &c. But because the Court of the said Lord the King here, are not yet advised of rendring (giving) their Judgment of and upon the Premisses, Day is thereof given to the Parties aforesaid, before the Lord the King at Westminster, (such a Day after such a Return) for bearing their Judgment of and upon the Premisses; for that the Court of the said Lord the now King here, are not yet advised thereof, &c. And so enter your Continuances till Judgment is given.

Continuances.

See more of Pleas in the following Head of Issues, &c.

Of Issues, and Records in B. R.

Where there arises on the Pleadings an Affirmation on the one Part, and a Denial on the other Part, then there is an Issue, which is to be tried by the Country. And when a Plea is pleaded to the Declaration, and the Plaintiff's Attorney sets his Hand to the Plea, then is the Issue join'd: And such an Issue, tho' only in Paper, and not in-

Issue, when arises.

grossed, cannot be waved but by Consent of both Parties.

Issue joined.

But if an Issue be so joined, and the Plaintiff neglects to enter it the same Term, the Defendant, may within the first five Days of the succeeding Term, alter his Plea, and plead *de novo*. And if the Defendant gives the Plaintiff a Rule to enter his Issue, the Plaintiff must bring the Record into the Office within four Days after Notice, if the Action be laid in *London* or *Middlesex*; and if it be in the Country, he must bring it before the *Continuance-Day* of that Term; or a *Nonsuit* may be entred.

Pleas to Issue.

When the Defendant pleads, and the Plaintiff replies, and denies the Plea, the Defendant is to make up the Issue; for by the Plaintiff's Replication a new Issue is tendred. Where there is an Issue to Part, and a Demurrer to Part, the Trial of the Issue may be before or after the Arguing the Demurrer, at the Election of the Plaintiff. And if there are two Issues joined, one good and one bad, this is erroneous for both, and the good Issue is vitiated by the bad one, where entire Damages are given upon both Issues; but it is otherwise if the Damages be several.

After a special Plea, the Defendant's Attorney, at any Time before he sets his Hand to consent to the Entry of a Special Issue, may plead the General Issue, and wave such Special Plea as he has pleaded.

How to make up Issues.

If you have an Issue to make up in *Hilary Term* from a Declaration of *Michaelmas*, or
some

some other preceding Term, you are to write in a large Hand at the Top of your first Sheet of Paper thus :

Of *Hillary* Term in the fourth Year of the Reign of the Lord George the Second, now King of Great Britain, &c. and then under it write the Issue thus :

Dorset, *ff.* *It is to be remembred, That ere-while to wit, in Michaelmas Term, &c. now past, came before the Lord the King at Westminster, A. B. by C. D. his Attorney, and brought here into the Court of the said Lord the now King, (then there) his certain Bill against E. F. in Custody of the Marshal, &c. of a Plea of Debt, &c. and there are Pledges of prosecuting, to wit, John Doe and Richard Roe, which said Bill follows in these Words, to wit, Dorset, ff. A. B. complains of E. F. in Custody, &c. (and so recite the Declaration verbatim) And then with a new Line enter your Imparlance thus :*

And now at this Day, to wit, &c. (the first Day of the Term that the Issue is entred) in this same Term, to which Day the foresaid E. F. had Licence of imparling, and then to answer, &c. came before the Lord the King at Westminster, as well the foresaid A. B. by his Attorney aforesaid, as the foresaid E. F. by G. H. his Attorney, and the same E. F. defends the Force and Injury when, &c. and saith, that he does not owe to the foresaid A. B. the foresaid Sum of, &c. nor any Penny thereof, in Manner and Form as the foresaid A. B. hath above against him complained, and of this (hereof) he puts himself on the Country, and the foresaid
A. B.

The Practising Attorney:

A. B. likewise, &c. Therefore let the Jurors come (to inquire thereof) before the said Lord the King at Westminster, such a Return-Day (generally the first of the following Term 2.) and who neither, &c. To take Knowledge, &c. because as well, &c. The same Day is given to the Parties, &c.

If the Defendant plead not Guilty in Trespas, then after (quando) when, &c. say, And saith, that he is not Guilty, &c. In Case say, And saith that he is in nothing Guilty of the Premises above charged upon him, as the said A. hath above against him complained. On Non Assump. say, And saith that he did not take upon himself (or, did not promise) in Manner and Form as the same A. hath above complained, &c. And on Non est factum to a Bond say, And saith that he ought not to be charged with the foresaid Debt, by Virtue of the writing Obligatory aforesaid, because he saith that the Writing Obligatory aforesaid is not his Deed; and of this he puts himself on the Country, &c. i. e. In Trespas, *Et dicit quod ipse non est inde culpabilis. In Case, Et dicit quod ipse in nullo est cul. de premiss. superius ei imposit. prout A. superius vers. cum querit. On non Assumpsit, Et dic. quod ipse non assumpsit super se modo Et forma prout idem A. superius querit. Et c. and on non est Factum to a Bond, Et dicit quod ipse de debito præd. virtut. script. obl. præd. onerari non debet, quia dic. quod script. obl. præd. non est Factum suum. Et de hoc pon' Et c.*

If your Issue is joined the same Term the Declaration is of, enter it thus. Memorandum, &c. It is to be remembred, That (such a Week-Day, the first of the Term) in this same

same Term, came before the Lord the King at Westminster, A. B. by C. D. his Attorney, and brought here (hither) into the Court of the said Lord the King at Westminster, then there, his certain Bill against E. F. in Custody of the Marshal, &c. of a Plea, &c. (as above.) If the Declaration be above four Terms standing, you may say, Memorand. &c. It is to be remembred, That, &c. in the Term of, &c. in the fourth Tear of the Reign, &c. For after the fourth Term, you cannot say such a Term last past, but must set down the Tear, &c.

The Memorandum the same Term with the Declaration, hath no Imparlance; but after the Declaration, enter the Plea with a new Line: *And the foresaid R. E. by G. H. his Attorney, comes and defends the Force and Injury, &c. and saith that he doth not owe, &c.*

You are to enter your Issue before you seal your Record, or before the next Term after: And if your Trial be after the Term, or at the Assizes, it is entered on a Roll out of the *Nisi Prius* Office, from whence Presses of Parchment are delivered out to the Attornies to ingross the Record, which is to be sealed by the *Custos Brevium*.

For ingrossing the Record, rule your Parchment near the Top, and make a Margent of an Inch; and on the two or three first Lines, write in large Court-Hand thus: *Placita coram Dom. Reg. &c. Pleas before the Lord the King at Westminster, of Hillary (or other) Term in the fourth Tear of the Reign of the Lord George the Second, King of Great Britain, &c.* And then in small Court-Hand; Dorset, ff. *It is to be remembred, that ere-whiles*

(to

Records.

2.

(to wit) in Michaelmas (or other) Term last past, came before the Lord the King at Westminster, A. B. by his Attorney, &c. (ut supra to the End of the Issue.) Then leaving about half an Inch Space, begin another *Placita* in great Court-Hand: In the first *Placita* must be mentioned the Term the Issue is joined; and in the second, the Term in which it is to be tried, &c. And afterwards in a new Line, you are to enter a *Jurata*: Then you must take out a *Venire facias*, on this Issue and Record, for the Sheriff to impanel a Jury: Upon which shall issue a *Distingas Juratores*, and *Subpœna's* for Witnesses, &c. in order to Trial.

Issues tried.

If the Plaintiff will not try his Issue after joined, in such a Time as by the Course of the Court he ought, the Defendant may make out the *Venire* by Proviso, to free himself from the Trouble of defending the Action, and recover Costs for unjust Vexation.

If the Action be laid in *London* or *Middlesex*, the Defendant ought not to give a Rule to enter his Issues, or to try the Cause by Proviso the same Term Issue is joined, unless the Plaintiff hath first given him Notice of Trial that Term, and made Default; but if the Action lie in the Country, the Defendant shall give the Plaintiff Rule to enter his Issue as of the same Term Issue is joined.

Wager of

Law. See 2

Sal. 682, &c.

2 Lev. 106.

9 Co. 87, 88.

4 Co. 93.

Where *Wager of Law* is admitted (as in Cases of Debt, for the Proof which there is no Deed or Witness) the Party appears without the Bar, at the End thereof towards the Right-hand of the Judges, where the Secondary having the Record in Court, demands

demands of him whether he will wage his Law, and he has answered Yes, he takes an Oath, That he does not owe the Plaintiff the Sum of, *£c.* (charged in the Declaration) nor any Penny thereof, in Manner and Form as the Plaintiff hath declared against him. And besides, he ought to have eleven of his Neighbours to testify that they believe he has taken a true Oath; but this is often dispensed with. But before the Defendant Swears, the Plaintiff is called thrice; and if he does not appear he becomes Nonsuit, and the Defendant goes quit without taking any Oath; but then the Plaintiff may bring another Action, which commonly is the Case, *£c.* wherein the Defendant cannot wage his Law: Whereas if the Plaintiff appears when called *ut supra*, and thereupon the Defendant wages his Law, the Plaintiff is barr'd of his Debt for ever.

I shall conclude this Head of *Issues* and *Records*, preparatory to Trials, with a Record of a Plea, Replication, Demurrer, Judgment, *£c.* in the fourth Year of the Reign of his present Majesty King *George*; and which contains great Variety of Proceedings *entirely new*.

A Record

A Record of a Declaration, Plea, Replication, Demurrer, Writ of Enquiry, and Judgment in Action upon the Case.

Of Easter Term in the
fourth Tear of George }
the Second, now King } Roll the Tenth.
of Great Britain, &c. }

A Declaration
on two Notes
in Case.

1st Count.

London, ss. *It is to be remembred, that ere-while, to wit, in Hillary Term last past, H. W. by P. H. his Attorney, came before the Lord the King at Westminster, and brought into the Court of the said Lord the King, then there (held) his certain Bill against T. C. in Custody of the Marshal, &c. of a Plea of Trespass on the Case, and there are Pledges the of Prosecution, to wit, John Doe and Richard Roe, which said Bill doth follow in these Words, ss. London, ss. H. W. complains of T. C. in Custody of the Marshal of the Marshalsea of the Lord the King, being before the King himself, for that, to wit, that whereas, the aforesaid T. after the first Day of May, in the Tear of our Lord One Thousand seven Hundred and Thirteen, at London aforesaid, to wit, in the Parish of the Blessed Mary of the Arches, in the Ward of Cheap, made his certain Note in Writing, called a promissary Note, subscribed with his proper Hand, bearing Date, (such a Day and Year, &c.) aforesaid, and then and there delivered the said Note to the said H. by which said Note, he the said T. promised to pay to the said H. or his Order, eighty-four Pounds, within five Months after the Date of that Note, for Va-*

lue

due received, (by him the said T.) And the same H. in Fact saith, that he the said H. at any Time hitherto, hath not ordered the aforesaid eighty-four Pounds contained in the Note aforesaid, to be paid to any other Person whatsoever. By reason of which said Premisses, and also by Force of a certain Statute in this Case thereof lately made and provided, the said T. was chargeable, and became and yet is chargeable to pay to the same H. the aforesaid eighty-four Pounds in the said Note contained: And being so chargeable, the same T. in Consideration thereof, afterwards, to wit, the same Day and Year last abovementioned at London aforesaid, in the Parish and Ward aforesaid, took upon himself, and the said H. then and there faithfully promised to pay to the said H. the aforesaid eighty-four Pounds, according to the Tenor of that Note. And also, whereas afterwards, to wit, the same (Day, Month and Year) last abovementioned, at London aforesaid, in the Parish and Ward aforesaid, the aforesaid H. and T. accounted together between themselves, of and concerning divers Sums of Money to the same H. by the aforesaid T. before that Time due, and then being in arrear and unpaid; and upon that Account, the same T. was then and there found in Arrearage towards the same H. in eighty and four Pounds of lawful Money of Great Britain; And being found so in Arrearage, the same T. afterwards, to wit, the same Day and Year last abovesaid, at London aforesaid, in the Parish and Ward aforesaid, in Consideration thereof, took upon himself, and to the same H. then and there faithfully promised, that he the same T. would well and faithfully pay and content

2d. Count.

3d Count.

content (satisfy) to the same H. the aforesaid eighty and four Pounds last mentioned, within five Months then next following: And also, whereas afterwards, to wit, (such a Day and Year aforesaid,) in the Parish and Ward aforesaid, be the same T. made another his Note in Writing, called a promissory Note, subscribed with his proper Hand, bearing Date the same Day and Tear last aforesaid, and then and there delivered the same Note to the said H. by which said other Note, be the same T. promised to pay to the said H. or Order, six Months after the Date of that Note, fifty-five Pounds and sixteen Shillings, for Value received: And the same H. in Fact saith, that be the same H. at any Time hitherto, hath not ordered the said fifty-five Pounds sixteen Shillings, contained in the Bill or Note aforesaid, to be paid to any other Person whatsoever, by Reason of which said Premisses, and also by Force of a certain Statute in such Case lately made and provided, the same T. was chargeable, and became and yet is chargeable to pay to the same H. the aforesaid fifty-five Pounds and sixteen Shillings, in the said last mentioned Note; contained and being so chargeable, the same T. in Consideration thereof, afterwards, to wit, the same Day and Tear last aforesaid, at London aforesaid, in the Parish and Ward aforesaid, did take upon himself, and to the said H. did then and there faithfully promise to pay to the same H. the aforesaid fifty-five Pounds sixteen Shillings, according to the Tenor of the same Note: And also, whereas, the same (Day, Month and Tear) last aforesaid, at London aforesaid, in the Parish

4th Count.

and Ward aforesaid, the aforesaid H. and T. accounted together between themselves, of and concerning divers other Sums of Money to the same H. by the aforesaid T. before that Time due, and (being) then in arrear, and unpaid, and upon that Account be the same T. was then and there found in Arrearage, towards the same H. in other fifty-five Pounds sixteen Shillings, of like lawful Money of Great Britain; and being so found in Arrearage, be the same T. afterwards, to wit, the same Day and Tear last aforesaid, at London aforesaid, in the Parish and Ward aforesaid, in Consideration thereof, took upon himself, and to the same H. then and there faithfully promised, that be the aforesaid T. would well and faithfully pay, and content (satisfy) unto the same H. the aforesaid fifty-five Pounds sixteen Shillings last mentioned, within six Months then next ensuing. And also whereas afterwards, to wit, (such a 5th Count. Day) in the Tear of our Lord last aforesaid, in the Parish and Ward aforesaid, the aforesaid T. was indebted to the same H. in one Hundred thirty-nine Pounds sixteen Shillings of like lawful Money of Great Britain, for so much (such Sum of) Money of him H. by the aforesaid T. to the Use of him H. before that Time had and received; and being so indebted, be the same T. afterwards, to wit, the same Day and Tear last aforesaid, at London aforesaid, in the Parish and Ward aforesaid, in Consideration thereof, took upon himself, and to the same H. then and there faithfully promised, that be the same T. would well and faithfully pay and content (satisfy) to the same H. the aforesaid one Hundred thirty-nine Pounds sixteen Shillings,

6th Count.

Shillings, when thereto he should be afterwards required: And also whereas afterwards, to wit, the same Day and Tear last abovesaid, at London aforesaid, in the Parish and Ward aforesaid, he the same T. was indebted to the said H. in other one Hundred thirty-nine Pounds sixteen Shillings, of like lawful Money, for so much Money by him H. unto the same T. at the special Instance and Request of him T. before that Time lent and accomodated; and being so indebted, the aforesaid T. in Consideration thereof, afterwards, to wit, the same Day and Tear last abovesaid, at London aforesaid, in the Parish and Ward aforesaid, did take upon himself, and to the same H. did then and there faithfully promise, that he the same T. would well and faithfully pay, and content (satisfy) unto the same H. the aforesaid one Hundred thirty-nine Pounds and sixteen Shillings, last mentioned, when thereunto afterwards he should be required; yet the aforesaid T. in no wise regarding his several Promisses and Undertakings, made as aforesaid; but contriving and fraudulently intending the same H. in this Particular, craftily and subtilly to deceive and defraud, the aforesaid several Sums of Money, or any Penny thereof, to the same H. hath not yet paid, nor in any Manner hitherto satisfied him for the same, although to do this the aforesaid T. afterwards, to wit, such a Day and Tear aforesaid, and often afterwards at London aforesaid, in the Parish and Ward aforesaid, by the same H. was required thereto; whereupon the same H. saith he is the worse, and hath Damage to the Value of two Hundred Pounds, and thereupon brings his Suit, &c.

I

And

And now at this Day, to wit, on Wednes- The Pleas
day next after the fifteenth Day of Easter, in
this same Term, unto which Day the aforesaid
T. had Licence of Imparling, and then to An-
swer (thereto,) &c. came before the Lord the
King at Westminster, as well the aforesaid H.
by his Attorney aforesaid, as the aforesaid T.
by W. G. his Attorney; and the same T. de-
fends the Force and Injury, when, where and
in such a Manner as this Court shall award:
And saith, that the foresaid H. ought not to
have or maintain his Action aforesaid there-
upon against him; because he saith, that well
and true it is, that he the said T. did take
upon himself in Manner and Form aforesaid, as
the foresaid H. hath by his foresaid Declaration
against him supposed; but the said T. further
saith, that after the making of the foresaid se-
veral Promisses, and Undertakings above sup-
posed to be made, to wit, the third Day of
January, in the Year of our Lord one Thousand
seven Hundred and thirty aforesaid, he the
said T. at London aforesaid, in the Parish of
the blessed Mary of the Arches, in the Ward
of Cheap, gave and delivered to the foresaid H.
five Thousand Pounds Weight of Copper, in full
Satisfaction and Discharge of the several Pro-
mises and Undertakings aforesaid, and of all
the Monies in the same (Declaration) mention-
ed; which said five Thousand Pounds Weight of
Copper the foresaid H. then and there had and
received from the foresaid T. in full Satisfacti-
on and Discharge of the several Promises and
Undertakings aforesaid, and of all the Mo-
nies

The Pradising Attorney :

nies in the same mentioned; and this he is ready to aver; whereupon he prays Judgment, if the aforesaid H. ought to have or maintain his Action aforesaid, against him, &c.

W. Chapell.

Replication.

And the aforesaid H. saith, That he, for any Thing by the foresaid T. above in pleading alledged, ought not to be precluded from having his Action aforesaid thereupon against him, because by protesting that the foresaid T. did not give or deliver to the same H. the foresaid Five thousand Pounds Weight of Copper, in full Satisfaction and Discharge of the several Promises and Undertakings aforesaid, and of all the Monies in the same mention'd; For Plea the same H. saith, that he had not or received from the foresaid T. the aforesaid Five thousand Pounds Weight of Copper, in full Satisfaction and Discharge of all the Monies in the same mentioned, in Manner and Form as the same T. hath in pleading above alledged; and he prays that this may be enquired by the Country, &c.

G. Eyre.

Demurrer.

And the foresaid T. saith, That the Plea aforesaid by him the said H. in Manner and Form aforesaid, above in his Replication pleaded, and the Matter in the same contained, are no ways sufficient in Law for the said H. to have or maintain his Action aforesaid thereupon against him the foresaid T. To which the same T. hath no Necessity, nor is held (bound) by the Law of the Land in any Manner to answer; and this he is ready to aver; wherefore for Default of a sufficient Replication in this Particular,

lar, the same T. as before prays Judgment, and that the aforesaid H. may be precluded from having his Action aforesaid against him the said T. thereupon.

W. Chapel.

And the foresaid H. saith, That the Plea a-fore- The joining
said by him H. in Manner and Form aforesaid, above in his Replication pleaded, are good in Demurrer.
and sufficient in Law for him the said H. to have and maintain his Action aforesaid thereupon against him the said T. which said Plea, and the Matter therein contained, the same H. is ready to aver and prove, as the Court here shall award, &c. And because the aforesaid T. hath not answered to that Plea, nor that hitherto hath in any manner denied, the same H. demands Judgment, and his Damages, by Occasion of the Promises, to be adjudged to him, &c. But because the Court of the said Lord the King now here are not yet advised of rendring (giving) their Judgment of and upon the Premises, a Day is given thereupon to the Parties aforesaid, before the Lord the King at Westminster until (such a Day next after such a Return) for bearing of their Judgment of and upon those Promises; and because the Court of the said Lord the King here are not yet advised of giving Judgment thereupon, &c. (that is, it was continued to a further Day for arguing the Demurrer.) Continuance

At which Day before the Lord the King, at Judgment a
Westminster, came the Parties aforesaid by good Plea,
their Attornies aforesaid; whereupon the Record and Matters aforesaid being seen, and by the Court of the said Lord the now King here
fully.

Inquiry of
Damages.

fully understood, and all and singular the Premises being examined, and mature Deliberation being had thereupon, for that it seem'd to the Court of the said Lord the now King here, that the said Plea aforesaid by him the said H. in Manner and Form aforesaid, above in his Replication pleaded, and the Matter in the same contained, are good and sufficient in Law, for him H. to have and maintain his Action aforesaid thereupon against him T. whereby the same H. remains thereon against the aforesaid T. undefended, &c. for which the same H. ought to recover his Damages, by Occasion of the Premises, against the aforesaid T. But because it is unknown to the Court of the said Lord the King now here, what Damages the said H. hath sustained by Occasion of the Premises; therefore it is commanded to the Sheriff of London, that by the Oath of twelve honest and lawful Men of his Bailiwick, he diligently enquire what Damages the aforesaid H. hath sustained, as well by Occasion of the Premises aforesaid, as for his Costs and Charges by him about his Suit in this Particular appointed (expended) and that the Inquisition, which he shall take thereupon, he send to the Court of the Lord the now King, before the King himself, at Westminster, on Tuesday next after three Weeks of Holy Trinity, under his Seal, and the Seals of those by the Oath of whom that Inquisition shall be taken, together with a Writ of the Lord the King, to him thereof directed: The same Day is given to the foresaid R. there, &c.

At which Day before the Lord the now King, at Westminster, came the aforesaid H. by his Attorney aforesaid, and the aforesaid Sheriff of London,

London, to wit, R. K. Knight and R. R. Knight, by Virtue of the Writ of the said Lord the King to him thereof directed, hath returned a certain Inquisition before him taken at such a House, situate in the Parish of St. Lawrence in the Old Jury, in the Ward of Cheap, in the same City of London, that the aforesaid H. hath sustained Damages by Occasion of the Premises aforesaid, besides his Costs and Charges by him about his Suit in this Particular appointed (expended) to One hundred forty-seven Pounds, six Shillings and six Pence, and for his Costs and Charges to twenty and seven Shillings and four Pence: Therefore it is considered, that the foresaid H. shall recover against the aforesaid T. his Damages aforesaid, assessed by the Jury aforesaid, in the Form aforesaid; and also eleven Pounds six Shillings and two Pence for his Costs and Charges aforesaid, to the same H. by the Court of the said Lord the now King, by his Assent adjudg'd of Increase; which said Damages (and Costs) do in the whole amount to One hundred and sixty Pounds, &c. and the aforesaid T. is in Mercy, &c.

Return of
the Writ,

And final
Judgment.

Note; I have inserted this Precedent at Length, for the Instruction of all young Attornies; and shall now proceed to the particular Proceedings on Trials, with other Matters relating thereto.

The Practising Attorney:

Of Trials, Judgment, Execution, &c. in B. R.

Notice of
Trial.

WHEN you proceed to Trial, eight Days Notice must be given the Defendant's Attorney, if the Defendant lives in *London* or *Middlesex*; and fourteen Days, if he lives above forty Miles from *London*; But eight Days Notice of Trial is good at the Assizes, let the Defendant live where he will, unless it be upon an old Issue. For if a Cause have continued four Terms without Prosecution, a Term's Notice is to be had of Trial, &c.

If on Notice of Trial in *London* or *Middlesex*, the Cause be not entered in the Lord Chief Justice's Book two Days before the Day it is to be tried; the Marshal, at the Request of the Defendant's Attorney, will enter a *Ne Recipiatum*; and there is a Rule of Court that Causes shall be entered four Days before Trial. If the Plaintiff give the Defendant Notice for a Trial to be made on a Day within Term, tho' it be not tried at the Day appointed, he is not obliged to give fresh Notice; but may try it the next Sitting in the same Term, on two Days Notice: But if at the next Sitting the Cause be not tried, then Notice of Trial is to be given as at first.

1 Sal. 83.

Where the Plaintiff proceeds not to Trial after Notice, and there is no Countermand, then the Defendant shall have Costs taxed by the Secondary, upon Affidavit made of Attendance

Attendance and Costs: But if the Plaintiff proceeds, the Case is opened, Witnesses are examined, and the Cause is tried, &c. *as usual*: Also where the Defendant pleads not, on a Rule given by the Plaintiff, the Plaintiff shall have Damages and Costs, for the Default of the Defendant: To shew which more fully, I shall here give a short Account of the usual Proceedings on Trials, in the Courts at *Westminster*.

In Actions on the Case, &c. the Declaration being drawn, upon Appearance made, you are to deliver it to the Defendant's Attorney with an Imparance; then you enter it that Term upon the Prothonotary's Rolls, and docquet it, keeping your Number-Roll by you, whereby you may continue your Imparance if the same be necessary: The Term following you give the Rule with the Secondary for the Defendant to plead by such a Day, otherwise the Plaintiff to have Judgment. Upon Pleading *non Assumpsit*, &c. you make a Copy of the Issue, and deliver it to the Defendant's Attorney, and give him Notice of Trial; in order to which you make out your *Venire facias*, and get it returned by the Sheriff; after this, you sue out your *Habeas Corpora*, make up your Record, and proceed to Trial: But if the Defendant plead not, but let it go by Default, then on entering Judgment you must award a Writ of Enquiry of Damages, returnable the Term following, and give the Defendant's Attorney Notice of the Time of executing it; which being executed, and the Damages inserted in a Schedule annexed to the Writ returned by the

Proceedings on Trials at Westm.

Writ of Enquiry. See the late Rules in C. B. ant.

The Practising Attorney:

Q.

the Sheriff to the Prothonotary's Office, you take it out in the common Remembrance, and give a Rule upon it, after which you carry it to the Prothonotary, and he taxes Costs: And then you carry it to the Clerk of the Judgments, and give him your Number-Roll and Term when the Judgment was entered, and he will make out a Writ of Execution, either a *Ca. fa.* or a *Fi. fa.* for your Damages and Costs.

2 Sal. 648.
649.]

Causes grown to Issue in the Courts at *Westminster*, are usually brought down in the Vacation, before the Day of Appearance appointed for the Jury above, into the County where the Action was laid, for the Ease of the Parties, Jury and Witnesses, to be tried there by Writ of *Nisi prius* at the Assizes: But in Matters of great Importance, or where the Title is intricate, the Judges in the Courts above, upon Motion and Information, will retain such Causes to be tried at *Westminster*; and then the Juries and Witnesses must attend there for the Trial of the Cause at the Bar.

Proceedings on
Trials at the
Assizes.

If your Cause comes on to Trial at the *Assizes*, you are first to get the Sheriff to return your *Distringas* of the Jury, and then deliver the Record to the Judge's Marshal; but before that, you ought to have your *Breviates* ready to instruct your Counsel, wherein your Case must be briefly but fully set forth, your Proofs be plac'd in Order, and proper Answers made to what you suppose may be objected on the other Side. When the *Distringas Jur'* is returned by the Sheriff, and the Record delivered to the Marshal, the Counsel

Counsel instructed, and all Parts ready, the Marshal delivers the Record to the Judge, and the Jury being elected by Ballot, according to the late Act, the Cryer calls over their Names; and when they are sworn, *they are bid* to stand together and hear their Charge; which being done, the Counsel on both Sides open the Case, by declaring the Cause of the Suit, &c. one after another, (the Plaintiff's Counsel first, if the Proof lie on his Side) and looking over their Breviates, argue the Matter in Contest, producing Witnessses to prove what they alledge. In the mean Time, the Clerk of the Assize or his Associate files the Writ, Panel, and Record together, and makes a Copy of the Jury's Names, and of the Issue they are to try; and when the Counsel have done, and the Judge summed up the Evidence, he delivers it to the Jury, and a Bailiff being sworn to keep them without Meat, Drink, &c. till they are agreed, they depart from the Bar, and when they are all agreed they return to give in their Verdict. Then the Party Plaintiff is called; and if he do not appear, the Defendant is to pay the Jury and the Fees of the Court, and a Nonsuit shall be recorded. But if the Plaintiff appear, then the Clerk asks the Jury *who they find for*, and what Costs and Damages; and so enters it on the Back of the Panel, and repeats it to the Jury, which finishes the Trial. *Note*; If the Defendant appear not when he is called, he loses the Benefit of his Challenge to the Jurors; but if he appear, he may challenge them.

Jury by Ballot.

When

The Practising Attorney:

When the Trial is over, if your Action be laid in *London* or *Middlesex*, the Associate will deliver you your Record with the *Distringas*, and the Panel or Names of the Jury thereunto annexed, upon the Back of which he writes the Substance of the Verdict, and the Costs given by the Jury, which must be carefully fixed to the Record, and stamp'd with a double 2*s.* 6*d.* Stamp. Then scraping the Back of the Record, near the Top, with a large Margent, begin ingrossing your *Postea* long-ways; the Purport of which *Postea* is, That afterwards the Plaintiff and Defendant came by their Attornies before such a Judge, and the Jury was elected, sworn, &c. And found such a Verdict, and so much Costs, &c. But in Trials at the *Affizes*, the Judge's Associate is to ingross the *Postea*, and not the Attorney; who only carries the Record after it is returned to the Master, to have Costs taxed. When the *Postea* is ingross'd, you are to carry it to the Clerk of the *Posteas* to be mark'd, for which you pay 4*d.* Then carry it to the Clerk of the Rules, for a Rule to be made out, for which you give him 1*s.* 4*d.* And this Rule will be out in four Days; which Time is allowed for the Defendant to move in *Arrest of Judgment*, if he hath any Cause for it; as that neither he nor his Attorney had Notice of the Trial, that the Record differs from the Deed pleaded, or that there is a material Defect in the Pleadings, &c. And when the Rule is out, if Judgment be not arrested, you must get the Record stamp'd with a double 2*s.* 6*d.* Stamp on the Back, and carry it to the Master of the

*Arrest of
Judgment.*

the Office, who will tax further Costs, and then is your Judgment fit to be entered. If your Cause be tried at the *Affizes* in the Country, you are not to take away the Record and *Distringas* with you, but the Associate is to keep them 'till the next Term, and indorse the *Postea*, for which he receives his Fee at the Trial; and you are to call upon him just before the next Term, to put him in Mind to have the *Postea* ready, and then you must proceed to have it mark'd, make out a Rule, and sign Judgment *ut supra*: And you are to enter your Judgment on a Roll, in doing whereof, Care must be had that no Error be committed.

If the Cause be tried within the Term, *Judgment entered.* the Rule in order to enter Judgment may be given the Day after; if the *Postea* be indors'd and mark'd: But if at the Sittings after Term, or at the *Affizes*, it cannot be given 'till the first Day of the next Term, No Judgment ought to be entred on a *Nisi* *dicit*, until two Rules have been given in the Office: Nor is any Judgment to be entered on the Rolls until the Costs be taxed, and the Judgment signed by the Secondary. Where a Verdict is for the Plaintiff, and he will not enter his Judgment thereon, the Defendant may enter it; for if the Defendant might not enter the Judgment, he would be hindered from pleading it in Bar to another Action for the same Cause.

Afterwards at the Day and Place within
contained, before R. Eyre, Knt. within written,
there being associated to him A. B. of, &c. Assumpsit.
Gentleman,

The Form of
a Postea on
Default, in
Assumpsit.

Of *Posteas*.

When the Trial is over, if your Action be laid in *London* or *Middlesex*, the Associate will deliver you your Record with the *Disstringas*, and the Panel or Names of the Jury thereunto annexed, upon the Back of which he writes the Substance of the Verdict, and the Costs given by the Jury, which must be carefully fixed to the Record, and stamp'd with a double 2s. 6d. Stamp. Then scraping the Back of the Record, near the Top, with a large Margent, begin ingrossing your *Postea* long-ways; the Purport of which *Postea* is, That afterwards the Plaintiff and Defendant came by their Attornies before such a Judge, and the Jury was elected, sworn, &c. And found such a Verdict, and so much Costs, &c. But in Trials at the *Affizes*, the Judge's Associate is to ingross the *Postea*, and not the Attorney; who only carries the Record after it is returned to the Master, to have Costs taxed. When the *Postea* is ingross'd, you are to carry it to the Clerk of the *Posteas* to be mark'd, for which you pay 4d. Then carry it to the Clerk of the Rules, for a Rule to be made out, for which you give him 1s. 4d. And this Rule will be out in four Days; which Time is allowed for the Defendant to move in *Arrest of Judgment*, if he hath any Cause for it; as that neither he nor his Attorney had Notice of the Trial, that the Record differs from the Deed pleaded, or that there is a material Defect in the Pleadings, &c. And when the Rule is out, if Judgment be not arrested, you must get the Record stamp'd with a double 2s. 6d. Stamp on the Back, and carry it to the Master of the

*Arrest of
Judgment.*

the Office, who will tax further Costs, and then is your Judgment fit to be entered. If your Cause be tried at the *Affizes* in the Country, you are not to take away the Record and *Distringas* with you, but the Associate is to keep them 'till the next Term, and indorse the *Postea*, for which he receives his Fee at the Trial; and you are to call upon him just before the next Term, to put him in Mind to have the *Postea* ready, and then you must proceed to have it mark'd, make out a Rule, and sign Judgment *ut supra*: And you are to enter your Judgment on a Roll, in doing whereof, Care must be had that no Error be committed.

If the Cause be tried within the Term, *Judgment entered.* the Rule in order to enter Judgment may be given the Day after; if the *Postea* be indors'd and mark'd: But if at the Sittings after Term, or at the *Affizes*, it cannot be given 'till the first Day of the next Term, No Judgment ought to be entred on a *Nil dicit*, until two Rules have been given in the Office: Nor is any Judgment to be entered on the Rolls until the Costs be taxed, and the Judgment signed by the Secondary. Where a Verdict is for the Plaintiff, and he will not enter his Judgment thereon, the Defendant may enter it; for if the Defendant might not enter the Judgment, he would be hindered from pleading it in Bar to another Action for the same Cause.

Afterwards at the Day and Place within
contained, before R. Eyre, Knt. within written,
there being associated to him A. B. of, &c. Assumpsit.
Gentleman,

The Form of
a Postea on
Default, in
Assumpsit.

The Practising Attorney:

Gentleman, by Form (Force) of the Statute, &c. came the within named C. D. (the Plaintiff) by his Attorney within named. And the within mentioned the Defendant, altho' solemnly demanded, (called) did not come, but made Default; therefore let the Jury within written be taken against him by Default: And the Jurors of that Jury being called to wit, G. H. J. K. L. M. &c. did (all) come, (appear) and were sworn of that Jury: Who being elected, tried, (drawn) and sworn to say the Truth of the Matters within contained, do say, upon their Oath, That the foresaid E. B. did undertake, or did promise in Manner and Form, as the foresaid C. D. hath within complained against him: And they assess the Damages of him C. D. by Occasion of the not performing of the Promise and Undertaking within written; besides his Costs and Charges by him in and about his Suit sustained in this Particular, to Twenty Pounds: And for those Costs and Charges to 50s. Therefore, &c. See before.

Quære the Form above, as to the Appearance of the Jury, &c. since the late Act for electing Jurymen by Ballot, &c.

Of Entering Judgments on Trials.

*Rolls to enter
Judgments,
how made up,
&c.*

THE Rolls to enter Judgments are delivered out in the King's Bench Office; and for entering them you must make a small Margent about a Thumb's Breadth; then begin about a Span from the Top of the Roll in large Secretary Hand, thus: — As yet of
the

the Term of St. Hillary, &c. in the 4th Tear &c. Witness Raymond. — Then write the Warrants of Attorney; for the Plaintiff, thus: London, ff. A. B. puts in his Place, (stead) C. D. his Attorney against E. F. of a Plea of Trespass on the Case, &c. And for the Defendant thus: Lond. ff. E. F. puts in his Place G. H. his Attorney at the Suit of A. B. in the Plea aforesaid, &c. And then add, Postea continuat. inde Process. inter partes predict. de Plito pred. per Jur' pred. posit. inde int. eas in respect. coram D'no Rege apud Westm. usque Diem, &c. (as in the Jurat' of the Record) nisi Dilectus & fidelis Rob'tus Dominus Raymond Capital. Justic. D'ni Regis ad p'tita in Cur' ip'ius D'ni Regis coram ipso Rege tenend. Assign. prius die, &c. apud Guild-Hall, London per formam statut. ven. pro defect' Jur' &c. Ad quem diem Coram D'no Rege apud Westm. ven. predict. A. B. per Attorn. suu' predict. & prefat. Capital. Justic. coram quo, &c. misit hic Record. suu' coram eo habit' in hec verba ff. Postea die & Loco, &c. recite the Postea verbatim) Ideo Conf. est quod pred. A. B. recuperat vers. prefat. C. D. Debitum suum pred. & Dampn' sua pred. per Jur. predict. in forma pred. assess. Necnon Decem libr' &c. (the Costs taxed) pro Mis. & Custag. suis pred. eid'm A. B. per Cur' dicti Domini Regis nunc hic ex assensu suo de Incremento adjudicat. que quid'm Dampna in toto se attingunt ad, &c. Et pred. C. D. in Mi'a, &c. That is in English.

Lond. ff. It is to be remembred, That, &c. (reciting the Record to the End of the Issue) Afterwards Process was continued thereupon between

The Practising Attorney:

tween the Parties aforesaid, of the Plea aforesaid, and the Jury aforesaid between them was put in Respite (to be) before the Lord the King at Westminster, until (such a Day as in the Jurata of the Record) except the beloved and faithful Robert Lord Raymond; the Chief Justice of the Lord the King, for Pleas assigned to be held in the Court of the Lord the King before the King himself, shall before — Day, &c. be (come) at the Guildhall, London, for Defect of Jurors, &c.

But *Quære* the Form since the Statute for regulating Juries, &c.

In *Trespass* and *Ejectment*, and upon *Non est Factum* pleaded, instead of, and the aforesaid C. D. is in Mercy, &c. You must say, and let the foresaid C. D. be taken, &c. and both are to be put in the Margent: But the Want of entering these Words in a Judgment, or mistaking one for the other, is help'd by the Stat. 16 and 17 Car. 2. c. 8.

Thus is your Judgment entered and finish'd; but you must leave a good Space between it and the Beginning of another Judgment, that there may be room to enter *Committiturs*, (which is where the Defendant is charged in the *King's Bench Prison*) and to enter Satisfaction acknowledg'd upon the Record, &c.

Note; Issues and Judgments may be entered on both Sides the Roll, tho' you must be careful not to write too near the Bottom on the Fore-side, where is to be written the Number of the Roll, and the Chief Clerk's Name

Name in a large Secretary Hand and Figures,
thus:

ROTLO CXX. VENTRIS.

Note; the same Method is to be observed
for entering Judgments at the Assizes in the
Country, *mutatis mutandis*.

In Entering upon the Roll *Judgments with-
out Trial*, such as *Nil dicit* for Default, *Cog-
novit acc'onem* by Confession, *Non sum In-
formatus*, &c. by Assent, it is usually done
on the same Roll with the Declaration, &c.
observing to leave Spaces for *Committiturs*,
&c. and following the like Method *ut supra*,
in entering your *Adbuc*, &c. *Judgments
without Trial.*

You are to begin with a *Memorandum*, ei-
ther of the same Term or another, which
you will see by the Declaration, and so pro-
ceed to the *inde produc' Sectam*, &c. (and
you seldom have any Thing but the Decla-
ration marked on the Back, with the Nature
of the Judgment, and Costs taxed in the
Margin, to enter these by) Then beginning
a new Line write your Judgment, thus:

And now at this Day, to wit, Wednesday next A Judgment
after, &c. (the first Day of the Term that by Nil dicit,
Judgment is entred) in this same Term, to in Debt.
*which Day the foresaid C. had License of im-
parling to the Bill aforesaid, and then to an-
swer, &c. The foresaid A. B. came before the
Lord the King at Westminster, by his said At-
torney, and the foresaid C. D. although at the
same Day he was solemnly called, did not ap-
pear, nor said any Thing in Bar or Preclusion
of the foresaid Action of the said A. B. whereby*
P the

The Practising Attorney:

the same A. remains against the foresaid C. thereof undefended, &c. Therefore it is considered, That the foresaid A. shall, (should) recover against the foresaid C. his Debt aforesaid; and also, &c. for his Damages which he hath sustained, as well by Occasion of the Detention of that Debt, as for his Costs and Charges by him expended, &c. in and about his Suit in this Particular (behalf) by the Court of the said Lord the King, now here adjudged to the said A. with his Assent; and the foresaid C. is in Mercy, &c.

Where the Judgment is Confessed the same Term the Declaration is of, there is no Imparlance.

*A Judgment
by Conovit
Actionem.*

And the foresaid A. by, &c. his Attorney comes and defends the Force and Injury, when, &c. And saith, that he cannot deny the Action of the foresaid C. aforesaid; nor but that he owes to the same C. 10 l. &c. in Manner and Form as the foresaid C. doth above against him Complain; Therefore 'tis considered, That the foresaid C. shall recover against the foresaid A. his said Debt; And also, &c. for his Damages which he hath sustained, &c. (as above)

*A Judgment
by Non sum
Informatus. (I
am not in-
formed.)*

And the foresaid A. by, &c. his Attorney, comes and defends the Force and Injury, when, &c. and the foresaid C. prays, That the said A. may Answer to his Declaration aforesaid; whereupon the foresaid Attorney of the foresaid A. saith, That he is not informed by the same A. of any Answer to be given for the said A. to the same C. in the Premisses; nor doth he say any other Thing (nor hath he any other Thing

Dr, Lawyer's Office.

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Thing to say) thereon in Bar or Preclusion of the foresaid Action of him C. whereby the same C. remains thereof against the foresaid A. undefended, &c. Therefore it is considered, That the foresaid C. shall recover against the foresaid A. his Debt aforesaid, together with, &c. (as above.)

Where a Judgment is without Trial, there must be a Writ of Enquiry of Damages, and Notice given; and the Sheriff summons a Jury, examines Witnesses, &c. and makes a Return on the Writ, in order to Execution. The Notice given to the Defendant or his Attorney, is as follows:

Brown against Calf, in Trespass, &c.

Mr. Downes,

TAKE Notice that a Writ of Enquiry of Damages will be executed in this Cause on Wednesday the 15th Day of April instant, at Eleven of the Clock in the Forenoon, at the Court-House near Westminster-Hall, from

April 6th,
1731.

Your humble Servant,
A. B.

The Clerks of B. R. when they carry in their Entries docquet them, thus:

Entries of A. B. Gentleman, one of the Docquets,
Clerks of Edward Ventris, Esq; Chief
Clerk of the Lord the King, &c. of
Trinity-Term, in the 4th Year of the
Reign of George the Second, King of
Great Britain, &c.

P 2

Dorset,

The Practising Attorney:

Dorset, ff. Not guilty, in
Trespass between A. B.
Plaintiff, and C. D. De-
fendant. } Roll the 9th.

Somerfet, ff. He owes no-
thing in Debt for 100 l.
on Bond—between C. D.
Plaintiff, and E. F. De-
fendant, and for 40 s. for
Damages and Costs. } Roll the 20th.

Devon, ff. Not informed
in Debt on Money Lent
between C. D. Plaintiff,
and E. F. Defendant. The
same for 500 l. Debt, and
for, &c. Costs. } Roll the 139th.

The new Act for Amendment of the Law, enacts, That all the Statutes of Jeofails shall extend to all Judgments on *Confession*, *Nil dicit*, or *Non sum Informatus*: And no Judgment shall be reversed, &c. for any Imperfection or Defect, which would have been aided by those Statutes. *Vide* the Act.

*Execution on
Judgments.*

After Judgment, Process of *Execution* is awarded, which begins where the Action ends, and is granted for obtaining Possession of the Thing acquired by Judgment of Law. The Writs of Execution are of three Sorts, viz. a *Ca. Sa.* against the Body, a *Fi. fa.* against the Goods, and an *Elegit* against the Lands: But if a Judgment be obtained, and the Plaintiff doth not take out Execution upon

*See 6 Mod.
288.*

1 Sal. 322.

it in a Year and a Day, he cannot then do it until he hath reviv'd his Judgment by a *Sci. fa.* which Writ is to give Notice to the Defendant, to shew Cause why the Plaintiff should not take out Execution upon the Judgment. And if you once charge the Body in Execution, you have no Remedy against the Goods or Lands, except the Defendant escape, or is privileged; or, where a Man dies in Execution, the Plaintiff may have an *Elegit* against his Lands.

If an Execution be returned, executed and filed, the Party can never have any other Execution upon that Judgment on which the Execution was grounded: For there can be but one Execution executed with Satisfaction upon one Judgment; and the Returning and Filing of it, makes it to be an Execution executed.

But one Execution.

Where Part is levied upon Goods, &c. upon an *Elegit*, or a *Fi. fa.* another *Elegit* may be sued *pro Residuo*: But when an *Elegit* is issued out, and the Lands taken, and the Writ is returned and filed, you shall not have any farther Execution.

George, &c. To the Sheriff of D. Greeting, We Command thee, that thou take C. D. if he may be found in thy Bailiwick, and keep him safely; so that thou hast his Body before us at Westminster on Wednesday, &c. (the Day of the Return) to satisfy to A. B. for 20 l. of Debt, which the said A. B. hath lately recovered against him in our Court, before us; And also of 30 s. which in the same our Court before us were adjudged to the same A. B. for his Damages

A Capias ad Satisfac. in Debt.

The Practising Attorney:

ges which he hath sustained, as well by Occasion of the Detention of that Debt, as for his Costs and Charges by him in and about that Suit sustained, in that Particular appointed, whereof the foresaid C. D. is convicted, as it is certain, (apparent) to us of Record; And have thou then there this Writ. Witness Raymond, at Westminster such a Day and Year, &c.

Alias dict.

If there be an *Alias dict.* (otherwise named) you must recite it: And if your Action be by way of Original, the Writ must be returnable *ubicunque*, (whatsoever) &c.

A Testatum
(attested) Ca.
Sa. in Debr.

George, &c. To the Sheriff of D. Greeting, whereas we had lately commanded our Sheriff of L. That he should take C. D. if he might be found in his Bailiwick, and keep him safely; so that he should have his Body before us at Westminster, at a certain Day now past to satisfy to A. B. of (for) 20 l. of Debt, which the same A. B. hath lately recovered in our Court before us, &c. (inserting as in the Ca. Sa. supra, to the Words) as it certainly appears to us on Record; (then add) and our said Sheriff of L. at that Day returned to us, that the foresaid C. was not found in his Bailiwick; Whereupon on the Behalf of the foresaid A. in our Court before us it is sufficiently attested, That the foresaid C. Skulks and Stroles in thy County: Therefore We Command thee, that thou take him if, he may be found in thy Bailiwick, and keep him safely so that thou hast his Body before us at Westminster on Wednesday, &c. next after, &c. to satisfy to the foresaid A. of the Debt and Damages

damages aforesaid; and have thou then there this Writ, &c.

This *Writ Testatum*, as it appears, is a Writ, where the Defendant cannot be taken upon a *Capias* in the County where the Action is laid, set out into another County. If you make out a *Ca. Sa.* after a *Fi. fa.* then after the Words, *As it certainly appears to us of Record, say, And now in the same Court before us, it is considered, That the foresaid A. shall have Execution against the foresaid C. of the Debt and Damages aforesaid; And have thou then there this Writ, &c.*

George, &c. *We Command thee, That of* A *Fieri facias*
the Goods and Chattels of C. D. (if on a Bond in Debt.
say otherwise named, &c. as in the Bond) in
thy Bailiwick, thou cause to be made 100l.
which A. B. lately in our Court before us at
Westminster, Recorded against him of a Debt;
And (so much) which to the same A. were
lately in our Court before us adjudged, as
well for his Damages which he hath sustained
by Occasion of the Detention of that Debt, as
for his Costs and Charges by him about his Suit,
in that Particular appointed, whereof he was
convicted, as to us it certainly appears of Re-
cord; And have thou that Money before us at
Westminster, such a Day, next after such a
Return, to render to the foresaid A. of his Debt
and Damages aforesaid; And have then there
this Writ, &c. Witness Raymond, at West-
minster, the 28th Day of November, in the
4th Year of our Reign.

A Fl. fa. in
Case, upon a
Promise.

For his Damages which he hath sustained, as well by Occasion of the not performing of a certain Promise and Undertaking to the same A. by the foresaid C. lately made, as for his Costs and Charges, &c. as above.

A Fl. fa. in
Trespas.

For his Damage, &c. as well by Occasion of a certain Trespas upon the Case to the same A. by the foresaid C. lately done, as for his Costs and Charges, &c. — If for the Defendant say, For Costs and Charges, &c. expended about his Defence in a certain Action of Trespas, at the Suit of the foresaid A. &c.

A Fl. fa. in
Covenant.

For his Damages, &c. as well by Occasion of the Breach of a certain Covenant lately made between the said C. and the foresaid A. as for his Costs and Charges, &c.

A Fl. fa. in
Ejectment.

For his Damages which he hath sustained by Occasion of a certain Trespas and Ejectment of his the foresaid A.'s Farm by the foresaid C. with Force and Arms, and against our Peace, done at H. in thy County, &c.

A Fl. fa. a-
gainst an
Executor, or
Administra-
tor.

That of the Goods and Chattels which were of A. B. deceased, which lately were at the Time of his Death, in the Hands and Custody of C. D. Executor of the Testament and last Will of the foresaid A. in thy Bailiwick, thou cause to be made, &c. (and if against an Administrator thus) That of the Goods and Chattels which were of C. D. deceased at the Time of his Death in the Hands and Custody of E. F. Administrator of all and singular the Goods and Chattels, Rights and Credits, which were of the foresaid

foresaid C. at the Time of his Death, &c. in
thy Bailiwick, thou cause to be made, &c.

Note; there may be a *Tefatum Fi. fa.* to
another County, where the Defendant hath
not Goods and Chattels enough in the Coun-
ty where the Action is laid, to satisfy the Exe-
cution, but hath sufficient in the other.

This Indenture made, &c. Between J. F. of, A Bargain,
&c. of the one Part, and R. C. and C. R. of, Sale, or As-
&c. of the other Part, Witnesseth, That where- signment of
as R. R. by the Name of, &c. by one Recogni- Lands ex-
zance, bearing Date, &c. taken, acknowledged tended upon
and sealed before Sir J. H. Knight, Lord Chief a Recogni-
Justice of England, according to the Form of zance.
the Statute for Recovery of Debts in that Case
provided, standeth bound unto the said J. F. in
the Sum of 100l. payable, &c. as by the same
Recognizance, &c. And whereas also the same
J. F. hath extended, and to him is delivered in
Execution the Manor of A. with the Appur-
tenances in the County of S. at the Tearly Rent
of, &c. for the Non-payment of the said Sum of
100l. Now the said J. F. for diverse good
Causes and Considerations him thereunto espe-
cially moving, hath bargain'd, sold, assigned,
and set over; And by these Presents doth Bar-
gain, Sell, Assign, and set over unto the said
R. C. and C. R. all the said Manor of A. with
the Appurtenances, and all the Estate, Right,
Title, Interest, and Demand whatsoever, which
be the said J. F. hath by Raason of the said Ex-
tent, of, in and to the said Manor, and of, in
and to every Part and Parcel thereof, and in
and to all and singular the Messuages, Lands
and

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and Tenements so extended and delivered in Execution as aforesaid; And the said J. F. for himself, &c. that he the said J. F. his, &c. at any time or times hereafter, shall not do any Act or Acts, Thing or Things, whereby the said Extent or Extents, or the Estate, Title or Interest of the said R. C. or C. R. or either of them, or the Executors, Administrators, or Assigns of them, or either of them, by Reason of the said Extent, may any wise be hurt, hindred or impeached, discharged, undone, or made void. And further, that he the said J. F. his Executors and Administrators, shall and will at the reasonable Request, Costs and Charges in the Law of the said R. C. and C. R. or either of them, do, or suffer to be done, made and acknowledged, all and every such lawful and reasonable Act or Acts, Thing or Things, Devise and Devises in the Law whatsoever, for the further Assurance, Surety, and Conveying of the Premises for and during all the Time and Term of the said Extent and Execution unto the said R. C. and C. R. as by their, or either of their Counsel learned in the Law, shall be reasonably devised, advised or required. In Witness, &c.

A Bargain
and Sale of
a Term of
Years taken
in Execution
upon a Fieri
Facias.

This Indenture made, &c. Between W. S. one of the Bailiffs of J. G. Esq; Sheriff of the County, &c. of the one Part, and D. C. &c. of the other Part; Whereas W. P. &c. at the time of making the Warrant herein after mentioned, was possessed of a Term of Years yet to come, of, and in all that Close of Land, &c. And whereas N. C. in the Court of Common Pleas at Westminster did recover against the said W. P. one Judgment for 40 l. Debt, and 30 s. Costs of Suit,

Suit, upon which said Judgment in the Term of St. Michael last past, a Writ of Fieri Facias ret. in Octabis St. Hill. issued out of the said Court, and was directed and delivered to the said Sheriff, in Form of Law to be executed, which said Sheriff, on the 2d Day of September last, made his Warrant unto the said W. S. and others, jointly and severally for the Execution of the said Writ; and the said W. S. by Virtue of the said Writ, and the said Warrant to him made as aforesaid, hath entered into and upon the said Close of Land, and seized and taken the same, together with the Estate, Term and Interest of the said W. P. therein. Now this Indenture Witnesseth, That the said W. S. in pursuance of the said Writ and Warrant, and for, and in Consideration of 5 l. to him by that said D. C. before the Sealing and Delivery hereof, well and truly in Hand paid, Hath bargained and sold, and by these Presents doth fully, clearly, and absolutely Bargain and Sell unto the said D. C. all the said Close of Land, and all the Estate, Right, Titles, and Interest of the said W. P. in his own Right, and in the Right of M. his Wife, of and in the said Close of Land: To have and to hold, unto the said D. C. for, and during all the Remainder of such Term and Terms of Years, as the said W. P. in his own Right, or in the Right of his Wife, had in the said Close of Land, in as large and ample Manner as the said W. P. and M. his Wife, or either of them, their, or either of their Executors, Administrators or Assigns, may, might, should, or ought to have held and enjoy'd the same. In Witness, &c.

George,

*A Writ of E.
legit.*

GEORGE, &c. To the Sheriff of D. Greeting: Whereas A. B. lately in our Court before us at Westminster, by Bill without our Writ, and by the Judgment of the same Court hath recovered against C. D. 100 l. of Debt together with 40 s. for his Damages which he hath sustained, as well by Occasion of the Detention of that Debt, as for his Costs and Charges by him about his Suit, in that Part appointed, whereof the said C. D. is convicted as appears to us of Record. And afterwards the foresaid A. came into our Court before us, and hath elected to be delivered to him all the Goods and Chattels of the foresaid C. except the Oxen and Heifers of his Carts, and in like Manner one Moiety of all and singular the Lands and Tenements of the foresaid C. in thy Bailiwick, according to the Form of the Statute thereof, lately made and provided, until the Debt and Damages aforesaid should be fully levied thereof. Therefore we command thee that all the Goods and Chattels of the foresaid C. within thy Bailiwick, except the Oxen and Heifers of his Carts, (Ploughs,) and likewise a Moiety of all the Lands and Tenements of the foresaid C. within thy Bailiwick, whereof the foresaid C. such a Day in the fourth Year of our Reign, on which Day the Judgment aforesaid was rendered, and whereof he was at any Time afterwards seized, thou cause to be delivered without Delay, by a reasonable Price and Extent; To hold to him as his own proper Goods and Chattels, and also to hold the Moiety of the Lands and Tenements aforesaid, as his Freehold, to him and his Assigns, according to the Form of
the

the Statute aforesaid, until the Debt and Damages aforesaid shall be thereof levied; and how this our Writ thou shalt have executed, make certainly known to us at Westminster, such a Day next after such a Return, under thy Seal and the Seals of those by whose Oath thou shalt have made that Extent and Appraisment. And have thou then there this Writ, Witness, &c.

There may be an *Elegit* after an *Elegit*, upon Discovery of more Lands, but not otherwise, when the Writ is returned and filed. See the Common Pleas hereafter.

As to the Writ *Scire facias*, after the Year and Day of the Judgment, it may be had of Course without Motion, unless the Judgment be above ten Years standing; for then the Plaintiff must move the Court for a Rule for a *Scire facias*, before he can make out such Writ. This Writ ought not to be granted, if the Record be not in Court; the Record being the Warrant for the *Sci. fac.*

Sci. fac. after Judgment.
Cumb. 250.
2 Salk. 599.
602.

A *Scire facias* may be traversed before Judgment given upon it, but not after: But a Writ of Error may be brought to reverse the Judgment given on the *Sci. fac.* if the Writ on which it was grounded was not good. If the Sheriff returns a *Scire facias*, and the Defendant does not, after a Rule given (of 4 Days), appear and plead, the Plaintiff shall have present Execution: But the Defendant may appear and plead a Release, Satisfaction, &c. If the Sheriff returns a *Nihil habet* on the first, you must give him an *Alias Sci. fac.* and if he returns that *Nihil* also, it amounts to a *Sci. fac.* and the

Plas.

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the Plaintiff after a Rule given may enter up Judgment of Course, and sue out what Execution he pleases.

Where either of the Plaintiffs or Defendants die, there cannot be Execution sued of the Judgment 'till a *Sci. fac.* issued out, and Judgment thereupon.

A Sci. fac. in Case.

GEORGE, &c. *To the Sheriff of D. Greeting: Whereas A. B. lately in our Court before us at Westminster, by Bill without our Writ, and by the Judgment of the same Court had recovered against C. D. 20 l. for his Damages which he sustained, as well by Occasion of not performing certain Premisses and Undertakings by him C. to the same A. lately made, as for his Costs and Charges by him about his Suit in that Part appointed, whereof the same C. D. was convicted, as appears to us certainly of Record. And now on the Behalf of the foresaid A. in our Court before us we have received Information, that altho' Judgment be thereof given, yet Execution of the foresaid Damages still remains to be made to him, whereof the same A. hath supplicated us, that a congruous Remedy be provided for him in this Particular; And we in this Part willing to be done what is just, we command thee, that by good and lawful Men of thy Bailiwick, thou cause the foresaid C. to know, that he be before us at Westminster such a Day, &c. to shew if any thing for himself he has or knows to say, why the aforesaid A. ought not to have his Execution against the said C. according to the Force, Form and Effect of the Recovery aforesaid, and have thou then there the Names of those by whom thou hast caused him to know, and this Writ, &c.*

The

The Writ of *Scire facias* also lies against *Sci. fac. a-Bail* to an Action; and if upon a *Scire feci* gainst Bail. or two *Nibils* return'd, the Bail do not appear, Judgment will be entered against them.

Upon a *Ca. fa.* against the Principal, and *non est Inventus* returned by the Sheriff, then a *Sci. fa.* may be issued out against the Bail to shew Cause why the Plaintiff should not have Execution against them: And if the Sheriff return *Nilil*, a second *Sci. fa.* must be awarded, which being returned also with a *Nilil*, the two Writs of *Sci. fa.* are to be taken out in the Office upon Remembrance, with the Returns of them; and Rules being thereupon given and filed, if the Bail do not shew the Cause to the contrary, Judgment shall be entered against them by Default; whereupon the Plaintiff may take out Execution against them, either by *Fieri facias*, or *Elegit*, &c.

The Plaintiff, if he please, may levy Part of the Debt on the Defendant's Goods first; and after resort back to the Bail for the Residue: But if he take the Defendant's Body in Execution, he cannot meddle with the Bail at all. There must be seven Days exclusive between the *Teste* and Return of every *Sci. Fa.* against Bail; as also of every *Ca. fa.* to warrant a *Sci. fac.* against them, and the *Ca. fa.* ought to be delivered to the Sheriff 4 Days before the Return be out: But by some of our Books, there ought to be 15 Days between the *Teste* and Return of these Writs; and the Delivery to be 8 Days before the Return.

When Part of the Debt levied, Bail liable for Residue.

Where

Where Bail is put in to an Action in this Court, the *Sci. fac.* against them must be always issued into *Middlesex*, because all Bails to Actions are supposed to be in Court, which is in *Middlesex*.

Of Writs of Error in B. R.

*Writ of Error
defined.*

A Writ of Error is a Writ issuing out of Chancery, that lies where Judgment is given in any Court below, or in C. B. and is returnable only in B. R. and if upon the Transcript of the Record into the *King's Bench*, it appears to the Court that there is Error in the Record or Process, or in giving of the Judgment, then the Judgment is reversed; but if there be none, then it is affirmed with double Costs.

*Days between
Teste and
Return.*

This Writ of Error must have 15 Days between the *Teste* and Return, and be returnable *ubicunque*, and not on a Day certain, but on a common Return-Day; and so likewise must all Process thereupon: And if the Sheriff, &c. to whom it is directed, shall give Notice to the Plaintiff in Error, to shew Cause why Execution should not be on the Judgment, and make a Return to that Purpose: Then you are to give a Rule of Course with the Secondary for the Plaintiff in Error, to assign his Errors by such a Day; which if he shall not do before the Rule is out, the Plaintiff in the Original Action may take out Execution against him.

*Returns of
this Writ.*

If the Sheriff, &c. summon not the Plaintiff in Error on the first *Sci. fac.* but returns a *Nihil*; then you must have an *Alias Sci. fac.*

fac. returnable 15 Days after the Return of the first *Sci. fac.* Upon which last *Sci. fac.* if the Sheriff shall again return *Nilil*, these two *Nilils* so returned, do in Law amount to the Return of a *Scire feci*. If the Plaintiff in Error shall assign Errors to be in the Record, then the Defendant must plead *in Nullo est Erratum*, and thereupon enter the Cause with the Clerk of the Papers, for the Errors to be argued: But, if the Error assigned be Special, or Matter of Fact, he must not plead this Plea too suddenly. ^{1 Salk. 270.}

You shall not assign that for Error, which you might have pleaded to the Action, nor the Merits of the Cause or Gift of the Action. *Cumberb. 325. Vide 1 Salk. 262, 264.* ^{Error assigned, Pleading, &c. Cumb. 325. 331.} And if the Plaintiff here in assigning Errors upon a Judgment in C. B. alledges *Diminution, viz.* That there is some Part of the Record not returned, then he must pray a *Certiorari* to bring them into Court, and enter them on Record; and the Defendant in Error, having given a Rule for a Day to return the *Certiorari*, if it be not returned the Plaintiff will lose the Benefit of it, and then you may proceed by *nullo est Erratum*; but if the *Certiorari* be returned and entered, then you are to take a Copy of it, and proceed as Counsel shall advise. And if the Plaintiff in Error shall alledge *Matter in fait*, as Nonage, or Death of the Plaintiff before Judgment, &c. the Plaintiff in the Action must plead thereto, that the Plaintiff in Error was of full Age; or in full Life, at the Time of rendering the Judgment, and take Issue thereupon

Q

thereupon, and try the same as you do any other Issue.

Judicium
Revocetur.

Where Judgment is given against the Defendant, and a Writ of Error is brought, and the Judgment is reversed, there shall be only a *Judicium Revocetur*, &c. entered without Costs; and no new Judgment be entered: But where Judgment is given for the Defendant, and it is reversed by the Plaintiff, there the Court which reverses the Judgment, shall give Judgment for the Plaintiff as the other Court ought to have done.

Writ of Error
de Recordo
coram vobis.
1 Salk. 337.
Cumb. 12, 47,
48.

Besides the Writs of Error I have mention'd, there is a Writ of Error which lies when the Record is already in *B.R.* and therefore called a Writ of Error *de Recordo quod coram vobis residet*; it may be brought for any Error in the Record, as Want of an Original, &c. or touching *Matters in fact*, as Nonage, or Death of the Party, &c. which must be sued out and allowed as an *Audit. Querel.* and copied and filed with the *Custos Brevium*, and then being entered at the End of the Judgment, you must assign your Errors, and make out your Writs of *Sci. fa. ad audiend' Errores* against the Plaintiff in the Judgment, and give Rules as before is directed; and if the Plaintiff in the Judgment will not appear, the Errors shall be taken *pro Confesso*, and the Judgment be reversed.

From other
Courts.

This Writ of Error also lies, where the Record of a Judgment is removed by a Writ of Error from other Courts, and the Writ of Error is quash'd for Death of the Plaintiff in Error, or other like Causes; the Heir or Executor of the Person dying, may have

this Writ. And hence we may observe there is no Need of bringing a Writ of Error in Parliament to reverse a Judgment in this Court, if the Errors be only in *Matters of Fact*, and not for *Matters in Law*, where the Proceedings were by Original.

To reverse a Judgment in *this Court*, where the Proceedings were by *Bill*, &c. You must allow your Writ of Error with the Clerk of the Errors in the Exchequer-Chamber, and proceed by *Sci. fa.* upon Rules given as above, the Method wherein the Clerk of the Error will direct you: But when such a Judgment shall be reversed or affirmed in the Exchequer-Chamber, then the Transcript of the Record thereof will be remitted back to this Court, to be entered up at the End of the Judgment here: And if such Judgment shall be affirmed in the Exchequer-Chamber, yet a writ of Error may be brought thereupon returnable in Parliament. But where a Writ of Error abates in *Cam. Scac.* no Judgment can be in *B. R.* without a *Remittitur*. 1 *Salk.* 261.

Error on Bill,
Original, &c.

In Actions by *Original*, and Judgments thereupon, no Writ of Error lies but what must be returnable in Parliament; which being expensive to purchase, and great Costs given thereon, it is the most prudent Way, when you sue for Estates in Land, or considerable Debts or Damages, to proceed by *Original*, as the most effectual Means to prevent Delays in Execution.

If you would bring a *Writ of Error in Parliament*, to reverse a Judgment in *B. R.* you must get the Cursitor to procure a Warrant from

Writ of Error
in Parliament

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from the King, which will cost 5*l*. And you are to allow it with the Clerk of Errors, and pay him 4*l*. And then the Lord Chief Justice of this Court carries the Record, and a Transcript thereof up to the House of Lords in full Parliament, and after they are examined there, leaves the Transcript with the Lords, but brings back the Record: And then if you are for the Defendant in Errors, you must get some Lord to move that the Plaintiff in Error may assign his Errors; but if for the Plaintiff, get him to move, that upon your Assigning Errors the Defendant may appear and make his Defence, and Counsel be heard on both Sides: Then after Judgment is either affirmed or reversed, the Clerk of the Parliament will remand the Transcript into this Court, with the Affirmation or Reversal thereof, to be entred upon the Record.

*Judgment in
Ireland re-
versed.*

A Writ of Error is sometimes brought in this Court, to reverse a Judgment given in the King's Bench in *Ireland*; to proceed wherein you must procure a Writ from the Cursitor directed to the Chief Justice of the Court of *B. R.* in *Ireland*, requiring him to summon the Plaintiff in the Action there, to appear here in this Court, to answer the Errors; whereupon the Errors are argued, &c.

The Prosecuting Writs of Error being a curious Business in the Practice of the Law, I shall here add (from the Proceedings of a Cause in this Reign) the Pleadings, Writs and Processes, with Directions in following them out from the Beginning to the End of this Prosecution.

B.

B. } Postea scil' t die Ven'is prox' post Octab. Error assigned
v. } Sti' Hillar' isto eodem Termino coram for Want of
M. } D'no Rege apud Westm' ven' pred' Job'es Original, &c.

B. per Thomam P. Attorn' suum, Et dic' qd' in Record' & process' pred. Ac etiam in Reddic' one Judicii pred' manifeste est Erratum in hoc videlt' qd' ubi per Record' pred' apparet qd' Judicium pred' in forma pred' reddit' fuit pro p'fat' F. M. versus ip'm B. Tamen per Legem t're hujus partis Mag. Brit. vocat. Anglie Judicium illud reddi debuisset pro eodem Job'e versus pred' F. Ideoque in eo manifeste est Errat' Errat' est etiam in hoc qd' ubi per Record' & Process. pred' apparet qd' pred' Job'es in Loquela pred' per Georgium W. Attorn' suum comperuit Idem tamen Georgius W. nullum h'uit Warrant' Attorn' de Recordo ad comparend' pro eodem Job'e ad Secta' pred' F. in pl'ito pred' per Br'e d'ci Dom' Regis nec sine Br'i ipsius D'ni Regis Poque in eo manifeste est Erratum Errat' est etiam in hoc qd' ubi per Record' & Process' pred' apparet qd' pred' F. in Loquela pred' querebat. de eodem Job'e B. per Georgium R. Attorn' suum Idem tamen Georgius R. nullu' h'uit Warrant' Attorn' de Recordo ad comparend' pro eodem F. versus pred' Job'em in pl'ito pred' per Br'ia d'ti Do'ni Regis nec sine Br'i ipsius Domini Regis Poque in eo manifeste est Erratum Errat' est etiam in hoc videlt' qd' per Record' pred' Certificat' qd' pred' Job'es B. Attach' fuit ad respondend' pred' F. de pl'ito Transgr' super Casu' idem tamen Job'es dic' qd' est nullum b're Original' ad Warrantizand' Attachiamen' pred' in Narr' pred' in Recordo pred' specificat' in pred' dei' Cur' D'ni Regis de Banco de Recordo af-

The Practising Attorney:

filat' remanen' Poque in eo manifeste est Erratum, Et per' idem Jo'bes C. sep'al B'ria d'ti D'ni Regis un' eor' Roberto Eyre Mil' Capital' Justic' d'ci D'ni Regis de Banco pred' dirigend' & aliud eor' prebonorabil' Georgio Henrico Comiti de Litchfield Custod' bri'um & Rot'lor' Cur' d'ci D'ni Regis de eodem Banco dirigend' ad testificand' in hac parte d'to D'no Regi plenius inde veritatem, Et ei conceditur, &c.

W. Chapell.

The same in English.

Brent } Afterwards to wit, on Friday
against } next after the Octaves of Hillary
Ment. } in this same Term, before the Lord
the King at Westminster, came the foresaid
J. B. by T. P. his Attorney, and saith, that
in the Record and Process aforesaid, and also in
the rendring (giving) of the Judgment aforesaid, it is manifestly erred, (or, there is manifest Error) in this, to wit, that where by the Record aforesaid, it appears that the Judgment aforesaid, rendred (given) in the Form aforesaid, was for the foresaid F. M. against him J. B. yet by the Law of the Land, of this Part of Great Britain called England, that Judgment ought to have been rendred for the same J. B. against the foresaid F. and therefore in that it is manifestly erred. Also it is erred in this, that where by the Record and Process aforesaid, it appears that the foresaid J. appeared in the Plea aforesaid, by G. W. his Attorney, yet the same G. W. had no Warrant of Attorney of Record to appear for the same J.
at

at the Suit of the foresaid F. in the Plea aforesaid, by Writ of the said Lord the King, nor without the Writ of him the Lord the King, and therefore in that it is manifestly erred. Also it is erred in this, that where by the Record and Process aforesaid it appears, that the foresaid F. in the Plea aforesaid, complains of the same J. B. by G. R. his Attorney, yet the same G. R. had no Warrant of Attorney of Record to appear for the same F. against the foresaid J. in the Plea aforesaid, by Writ of the said Lord the King, nor without the Writ of the same Lord the King; and therefore, in that it is manifestly erred. It is erred also in this Writ, that by the Record aforesaid it is certified, that the aforesaid J. B. was attached to Answer to the foresaid F. of a Plea of Trespass upon the Case, yet the same J. saith, that there is no original Writ to Warrant the Attachment aforesaid, in the Declaration aforesaid, specified in the foresaid Record, remaining filed of Record in the foresaid Court of the said Lord the King, of the Bench; and therefore, in that it is manifestly erred. And the same J. B. prays two several Writs of the said Lord the King, to wit, one to be directed to R. E. Knt. Chief Justice of the said Lord the King, of the Bench aforesaid, and the other to be directed to G. H. Earl of L. Keeper of the Writs and Rolls in the Court of the said Lord the King, of the same Bench, to Testify more fully the Truth thereof to the Lord the King, in this Part, (Particular) And it is granted to him, &c.

If the Judgment be obtained upon a Verdict, the Want of a Warrant of Attorney, and

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and Original, is helped by the Verdict. But if the Plaintiff in Error assigns his Errors in Manner aforesaid, then the Defendant in Error may plead thus :

Hillary the 4th of King George the 2d.

B. }
E. } *Error in nothing.*
G. }

By Eden Henry, pay'd 2 s. 2 d.

Then the Defendant in Error after this Plea pleaded, may move for Counsel, draw up the Rule, and enter the Cause with the Clerk of the Papers to be argued.

*Vide 1 Salk.
267.*

But if the Judgment goes by Default, and the Plaintiff in Error assigns his Errors *ut supra*, then the Defendant in Error must get a Rule for the Plaintiff in Error to return his *Certioraries*, and serve him with a Copy of it, which Rule is in Manner following, *viz.*

Hillary the 4th of King George the 2d.

} *Tuesday in the Morrow of the Purifi-*
cation. To Return several Writs of
Certiorari, &c.

Of Certiora-
ries.

You must make out your *Certioraries* as prayed in the Assignment of your Errors. And if the Error be for Want of an Original, your *Certiorari* must be directed to the *Custos Brevium*: If for Want of Warrant of Attorney, to the Lord Chief Justice.

The *Certioraries* are engrossed on double 5s. Stamps, and must be signed as a *Latitat*, for which you pay 1 s. 8 d. each ; and then sealed in like Manner, for which is paid 7 d. each

each ; and then carried to the *Custos Bre-*
vium to be allowed and returned ; for Al-
 lowance and Return whereof you pay 19 s.
 4 d. After you have got the same allowed
 and returned, you must file them with Mr.
Hawley, who signs the *Latitats*. The Form
 of these Writs is as followeth :

GEORGE, &c. *To our beloved and faithful* The Form of
George-Henry Earl of Lincoln, Keeper of the the Certiorari.
Writs and Rolls in our Court of the Bench at
Westminster : We willing for certain Causes
to be certified whether a certain Writ Original,
between J. S. Administrator of all and singular
the Goods and Chattels, Rights and Credits,
&c. and F. B. of a Plea of Trespass on the
Case, to the Damage of him J. 300l. be had
under your Custody of Record, or not ; We
command you, that you search the Original
Writs and other Memorandums of the afore-
said Court of the Bench of London, of Ea-
ster Term, in the 3d Year of our Reign, being
filed under your Custody ; And what you shall there
find of the Writ aforesaid, between the Parties
aforesaid, together with the whole Return (Re-
cord) of the said Writ, you certify without De-
lay to us, wheresoever we shall then be in Eng-
land ; and have there this Writ. Witness Ray-
mond, at Westminster the 23d Day of Janu-
ary in the 4th Year of our Reign.

If there be an Original filed of Trinity
 Term, the Plaintiff in Error should make
 out his *Certiorari* of *Easter Term*, &c. and
 get it returned that there is no Original of
 that *Easter Term* ; then the Defendant in Er-
 ror

The Practising Attorney:

ror must make out his *Certiorari*, and get it returned that there is an Original filed of Trinity Term, and may plead as follows, *viz.*

Hill^d 4^{to} G. R. 2^{di}.

S. }
against } It is erred in nothing.
B. }

By C. H. paid 2 s. 4 d.

The *Certiorari ex parte defenden*^t in Error is filed with the proper Person: And the Defendant in Error, after the Plea pleaded, is to move *pro Consil*^o, draw up the Rule, and enter the Cause to be argued. But if the Defendant in Error, after the Plaintiff in Error hath sued out his *Certiorari*, and got it return'd that there is an Original, and filed it, as before directed, doth not sue out his *Certiorari*, and plead as before-mentioned, then the Plaintiff in Error must sue out a *Sci. fac.* to compel him thereto.

A Scire facias
in Error.

GEORGE, &c. To the Sheriffs of London Greeting: Because in the Record and Process, and also in giving Judgment of the Plea, which was in our Court of the Term of St. Hillary, in the 3^d Year of our Reign, before Robert Eyre Knt. and his Companions our Justices of the Bench, by our Writ between F. S. &c. and J. B. of a certain Trespass on the Case, done to the same F. by the foresaid J. to the Damage of him F. 100 l. as 'tis said, there intervenes manifest Error, to the great Damage of him J. B. as from his Complaint we have received; which said Judgment and the Record and Process

Process thereof, we for certain Causes have lately made to come before us. And we willing that the Error, if any be, be corrected in due Manner, and that full and speedy Justice be done to the Parties aforesaid; in this Behalf do command you, that by honest (good) and lawful Men of your Bailiwick, you make the said J. S. to know, that he be before us in the Octaves of Hillary next, wheresoever then we shall be in England, to hear the Record and Process aforesaid, if he think it to be expedient for him. And further, to do and receive what our Court before us shall consider in that Part (Particular); and have you there the Names of those by whom you have made him to know, and this Writ. Witness Raymond, at Westminster, &c.

Ventris.

*By Virtue of this Writ to us directed, by The Return of
W. K. T. L. &c. good and lawful Men of our the Sci. fac.
Bailiwick, we have made the within named
P. S. to know that he be before the Lord the
King, wheresoever, &c. at the Day, &c. with-
in written, as we are within commanded.*

The Answer of P. C. and G. E. Sheriffs.

Upon this, the Defendant in Error sues out his Writ of Certiorari, and pleads; and the Errors are argued and determined; whereupon the Judgment before given is affirmed or made void, and Execution granted, &c.

Dominus

Entry of a
Writ of Error
on a Judgment
in C. B. and
the Proceedings
thereupon.

Dominus Rex Mand' dilecto & fidel. suo R.
Byre, Mil' Capital' Justic' suo de Banco breve
suum Clausum in hec verba, ff. Georgius Dei
Gratia, &c. (reciting the Writ of Error and
Return, and the whole Record) Postea scilicet
die, &c. Ven' pred' C. per Attorn' suum, Et di-
cit qd' in Record' & process' pred' ac etiam in
Redd'cone Judicii Loquel' pred' manifeste est
errat' in hoc videlicet quod per Record' pred' ap-
paret quod Judic' pred' in forma pred' reddit'
fuit pro pred' A. B. versus pred' C. D. ubi per
legem Terre Judic' ill' reddi debuisset pro pred'
C. D. versus prefat' A. B. Ideo in eo manifeste
est erratum, Et pet' idem C. D. br'e d'ci Dni
Regis ad premuniend' pred' A. B. essend' cor'
dict' Dom' Rege auditur' record' & process'
pred' & ei conceditur, &c. per quod precept'
est Vic' pred' quod per probos & legales ho-
mines, &c. Scire fac' prefat' A. B. quod sit
coram Domino Rege a die Pasche in quindecim
dies ubicunq; &c. auditur' record' & process'
pred. si, &c. Et ulterius, &c. idem dies dat'
est prefat' C. D. &c. Ad quem diem coram
Domino Rege apud Westm' ven' predict' C. D.
per Attorn' suum pred' & vic' non mis. inde
Breve Et pred' A. B. ad eund' diem solemniter
exact' per, &c. Attornat' suum scilicet ven' super
quo idem C. ut prius dicit quod in Recordo in
Process' pred' ac etiam in Redd'cone Judic'
pred' manifeste est errat' allegando Error' pred'
per ipsum in forma pred' allegat' & per' quod
Judicium pred' ob Error' & al' in Record'
& Process' pred' existen' revocetur adnulletur
& penitus pro nullo h'eatur Et quod ipse ad
omnia que occ'one Judicii predict' amisit resti-
tuatur

Rejoined Er-
ror.

tuatur, Et quod Cur' dict' Domini Regis hic
 procedat tam ad Examinacon' Record' & Pro-
 cess' pred' quam mater' pred' superius pro
 Error. assign' Quodque pred' A. B. ad Error'
 rejungen' &c. Super quo idem A. B. dic' quod
 nec in Record. & Process. pred' nec in redditi-
 one Judic' pred' in nullo est erratum, Et pet'
 qd' Cur' Domini Regis hic procedat tam ad
 Examinacon' Record. & Process. pred' quam
 Mater' pred' superius pro Error' assign' Et
 quod Judicium pred' in omnibus affirmet sed
 quia Cur' dict' Domini Regis nunc hic de
 Judicio suo de & super premiss. reddend' non-
 dum advisatur dies inde dat' est partibus pred'
 coram Domino Rege apud Westm. usque, &c.
 Ad quem diem coram Domino Rege apud
 Westm. ven' partes pred' per Attorn' suos pred'
 super quo visis & per Cur' Domini Regis nunc
 hic plen' intellectis omnibus & singulis premis-
 sis diligenterque examinat' & inspect' tam Re-
 cord. & Process. pred' ac Judic' super eisdem
 reddit' quam pred. Causis & Mater' per pred'
 C. superius pro Error. assign' pro eo quod videtur
 Cur' Domini Regis nunc hic quod nec in Re-
 cord. & Process. pred' nec in Reddicon' Judicii
 pred' in ullo vitiosum aut defectivum existit
 ac quod Record. ill' in nullo fuit Erratum Conf.
 est quod Judic. pred' in omnibus affirmet ac Judic. affirm.
 in omni robore stet & effectu dictis Causis & ma-
 ter. superius pro Error. assign' in aliquo non ob-
 stan. & ulterius per Cur. Domini Regis nunc
 hic consideratum est quod pred. A. B. recupe-
 ret versus presat' C. D. decem Libr' eidem A. B.
 per Cur. Domini Regis nunc hic secundum for-
 mam statut. in hujusmodi Casu nuper edit' &
 provis' adjudicat' pro Mis. Custag. & Dampn'
 suis Custag.

suis que sustinuit Occasione Dilation' Execution' Judicii pred' pretextu prosecucon' pred' Br'is de Error. Et quod pred' A. B. habeat inde Execucon', &c.

But if the Judgment be reversed, say;

Pro eo quod videtur Cur. Domini Regis nunc hic quod in Record. & Process. pred. ac etiam in Reddi'cone Judicii pred. manifeste est Erratum Cons. est quod Judicium pred. ob Error. ill. & al. in Record. & Process' pred. reversetur adnulletur & penitus pro nullo habeatur Et quod pred. C. ad omnia que occasione Judicii amisit restitatur, &c.

If the Reader will have a due Regard to our former Precedents touching *Writs of Error*, &c. it is conceived, he himself may with Ease Translate the above Entry into English.

New Act.

NOTE; by the Act 5 Geo. 1. cap. 13. it is enacted, That all Writs of Error, wherein there shall be any Variance from the Original Record, or other Defect, may be amended by the Court, and made agreeable to such Record: And where any *Verdict hath been given* in any Action, Suit, &c. in any of His Majesty's Courts at *Westminster*, or in any other Court of Record, the Judgment thereon shall not be staid or reversed for any Defect or Fault, in *Form* or *Substance*, in any Bill, Writ, &c. or for Variance in such Writs from the Declaration or other Proceedings.

Of Actions removed by Habeas Corpus, and Certiorari's, from inferior Courts into B. R.

AN Action may be removed out of an inferior Court of Record into B. R. *See Inf. Leg. 112.* as well by a Writ of *Certiorari* issuing out of this Court, as by a *Habeas Corpus cum Causa*.

In Suing a *Habeas Corpus*, you must know the *Stile* of the inferior Court, as a Direction to make out your Writ: The *Stile* of the Marshal's Court is, *Judicibus Cur' Palatii nostri Westm' & eor' cuilibet salt'm.* The Sheriffs of London's Court, *Majori Aldermanis & Vic' London' & eorum cuilibet salt'm,* &c. And if it be to remove a Cause from the Marshal's Court, having made your *Habeas Corpus ad faciend' & recipiend'* on a Piece of Parchment cut like a Bail-piece, write your *Fiat* in Secretary-Hand, thus:

Palace Court, *ss. Let a Writ of Hab. Corp. be made for A. B. to do and receive returnable immediately.*

May 9th

1730.

J. Brooks.

And then make a Ticket in Paper, in this Manner:

Palace Court, *ss. A Hab. Corp. for A. B. to do and receive returnable immediately.*

Then you are to carry your *Hab. Corp.* with *Offices.* the *Fiat* and Note to the King's Bench Office, to be stamp'd, for which you pay 6 s. 8 d. in Term-Time, and 7 s. 8 d. in Vacation; after-

The Practising Attorney:

afterwards you must seal it as other Writs, and carry it to the inferior Court to be allowed. The Parchment for *the Habeas Corpus* must be likewise stamped with Five Shillings Stamps.

Some few Days after Delivery, you are to call for the Return, and carry it to a Judge's Chamber, where you must put in Special Bail, let the Action be never so small, (except the Defendant be Executor or Administrator;) and on putting in Bail, you pay a Fee of 7 s. 4 d. and the Plaintiff's Attorney may serve the Defendant's Attorney with a Rule for a *Procedendo*, if Bail be not put in in Time, viz. within six Days in Vacation, and four in Term.

Writs Returnable.

If your *Habeas Corpus* be directed to any inferior Court within 5 Miles of London, it is made returnable *immediately*: But if above 5 Miles distant, it must then be returned on a Day certain. And if the Defendant be actually a Prisoner, he shall not be discharged out of Prison 'till the Bail on the *Habeas Corpus* be accepted or justified in Court; to prevent Difficulty wherein, it is adjudged best to put in Bail to the Action in the inferior Court, and then bring the *Habeas Corpus*. But if the Defendant cannot find Bail, and would be removed to the King's Bench Prison; you must deliver your *Habeas Corpus* there, and they will make you a Return, and send an Officer with the Defendant to a Judge's Chamber; and a *Committitur* being made, the Judge's Tipstaff takes the Prisoner into his Custody, and charges him in the King's Bench Prison. If the Defendant be

Defendant
removed to
B. R. Prison.

in

in Custody of a Bailiff, or in *Newgate*, and would be turned over, the Practice is the same: You deliver a *Habeas Corpus* directed to the Sheriff of *Middlesex*, and he after Search in his Office for what Writs he hath against the Defendant, will make Return of them, and then the Keeper of *Newgate* or his Officer is to carry the Defendant to a Judge's Chamber, where he will be turned over, *ut supra*. And the like Course is taken to remove a Prisoner from the *Fleet*, to the King's Bench Prison; only the Warden of the *Fleet*, will sometimes stand out two *Habeas Corpus*'s before he will resign his Prisoner.

In these Cases before you deliver your *Hab. Corp.* *executed.* *Habeas Corpus*, it is a good Method to agree with the Officer for carrying the Prisoner to the Judge's Chamber, and provide a Tipstaff in Readiness; and if you treat with the Marshal for Chamber-Rent, and for the Defendant's Liberty upon Security, before you carry him over, you will find your Account in it. The Fees usually paid are, *viz.* At the Judge's Chamber 11 s. 8 d. To the Tipstaff for carrying him over 10 s. To the Officer 10 s. And the whole Fees of suing a *Habeas Corpus*, to discharge a Prisoner from Confinement, in common Cases, I have observed to be as follows; but must confess the same to be very extorsive and unjust.

R

The

	<i>l.</i>	<i>s.</i>	<i>d.</i>
The <i>Hab. Corp.</i> _____	0	18	4
Return _____	0	9	6
Officer _____	0	10	0
<i>Mitt. & ret.</i> _____	0	1	8
Clerk of the Papers _____	0	11	6
Tipstaff _____	0	6	8
Commitment Fee _____	2	6	4
Half Bond Fee _____	0	15	6
Total	5	19	6

See *Inst. Leg.*
114.

The same Charge is for a Removal to the *Fleet Prison*; and you must also pay for searching, if there be any other Actions entered against the Defendant at the Sheriff's Office; And if he be a dignified Person, there is a Fee claim'd by the Warden of *5 l.* for the Commitment, and Liberty of the Rules.

What Actions
not removable.
See now the
late Stat.

An Action under *5 l.* is not originally removeable from an inferior Court; so that where any Action is entred under that Sum, you must bring another Action there of *5 l.* or more, at whose Suit you please, against the same Defendant, and then the *Habeas Corpus* removes both Actions together. You may deliver this Writ immediately before Trial; and you are to pay *4 s. 10 d.* for the Allowance of it, sometimes more, when several Actions are against the Defendant; for you must return all the Causes with which he is there charged, with the *Habeas Corpus*.

George,

George, &c. To the Mayor, Aldermen, &c. *A Hab. Corp.*
 Greeting: We Command you, that the Body of *returnable in*
 A. B. detained in our Prison, under your Cu- *Court.*
 stody, as 'tis said, together with the Day and *Inst. Leg. 112.*
 Cause of his Taking and Detaining, by whatso-
 ever Name the same A. shall be charged in the
 same, you have under safe and secure Conduct,
 before us at Westminster, such a Day, next
 after, &c. To answer to C. D. of a Plea of
 Debt, and further to do and receive all and sin-
 gular the Things which our Court before us shall
 then and there consider of him in this Part. And
 have you then there this Writ, &c.

If *returnable* immediately before the Chief
 Justice, say; Before our beloved and faithful
 Robert Lord Raymond, our Chief Justice assign-
 ed to hold Pleas in our Court before us, at his
 Chamber situate in *Serjeants Inn Chancery-*
Lane, immediately after the Receipt of this
 Writ, to do and receive all those Things
 which the same our Chief Justice shall then
 and there consider concerning him, &c.

If *returnable* immediately before one of the
Puisne Judges say, Before J. T. Knight, one of
 our Justices assigned to hold Pleas in our Court
 before us, at his Chamber situate in *Chancery-*
Lane, Fleet-street, immediately after, &c.

A *Habeas Corpus* in Vacation must be re-
 turnable at a Day certain, as; Have ye before
 us, &c. on Monday the 4th Day of April, a-
 bout such an Hour of the same Day next after
 the Receipt of this Writ, to do, &c.

Note; There are also *Habeas Corpus's* *ad*
Prosequend. ad respondend. and ad satisfaciend;
 as also *ad deliberand. & ad recipiend*.

Procedendo.

If the Defendant hath put in Bail in this Court, on Removal of a Cause hither by *Certiorari*, or *Hab. Corp.* and afterwards the Bail is disallowed by the Court: If the Defendant does not put in better Bail, such as the Court shall approve, a *Procedendo* may be had to carry it back again: For until the Bail is allowed, the Court is not possessed of the Cause, so as to proceed. After Bail is allowed, a *Procedendo* ought not to be granted; by accepting the Bail the Plaintiff admits of the Jurisdiction of the Court, and then it is too late to move for a *Procedendo*.

Certiorari.

A *Certiorari* to remove a Cause being returned before a Judge at his Chamber, and no Proceeding is in the Cause afterwards: If the Plaintiff will move for a *Procedendo*, he must move for it before the Judge before whom the *Certiorari* was returned, and not in the Court where the Cause is removed.

Rule.

A Rule of Course may be entered, at the Return of the *Certiorari*, for the Defendant to put in Bail within six Days after Notice given, or a *Procedendo* to issue to the inferior Court for the Plaintiff to proceed there.

*A Certiorari
to remove all
Causes.*

George, &c. To the Mayor, &c. Greeting: We willing for certain Causes to be certified as well of all Plaints levied or affirmed in our Court, before you, or any of you against A. B. at the Suit of C. D. as of certain Attachments made upon those Plaints, or any of them, in the Hands of, &c. or any of them, do Command you, and every of you, that the Plaints aforesaid, with all Things touching the same, or any of them, you send before us at Westminster on

— Day

Day next after (the Return) as fully and entirely as they reside before you, or any of you, together with this Writ, That we may further do thereof, (therein) as of Right, and according to the Law of England, we shall see is to be done. Witness Raymond, &c.

A *Procedendo* is a Writ that goes to the Court from whence the Cause is removed, on its appearing that there is no Cause for it, &c. to proceed *Non Obstante* the *Hab. Corp.* or *Certiorari*. It ends with, *Procedatis cum Effectu aliquo Brevis vobis nup. in contrarium. direct. non Obstante, &c. i. e. That you proceed with Effect, notwithstanding any Writ to you lately directed to the Contrary, &c.*—But of these Writs of *Procedendos*, *Certioraries*, *Habeas Corpus*, &c. See the English Lawyer, lately published.

Of Audita Querela's, and Proceedings on Statutes Merchant, &c. in B. R.

A *UDITA Querela* is a Writ which lies where one is bound in a Statute or Recognizance, or Judgment is had against any in Debt, and the Body taken in Execution: If the Party so in Execution hath a Release or other Matter pleadable in his Discharge, but has no Day given in Court to plead it, he may sue this Writ against the Person recovering. And it generally is had only in such Cases where the Party in Execution hath no other Remedy.

See Instit.
Leg. 166,
&c.
This Writ defined.

How prosecuted.

In prosecuting this Writ, you must make a *Precipe* according as your Case is, and carry it to the Curfitor, who makes and seals your Writ ; and then you are to bring it into Court for the Allowance (*Allocatur*) of the Secondary. If the Writ be grounded upon a Deed, after the Deed is prov'd in Court, and sufficient Bail put in, you may on Motion have a *Supersedeas* ; but if it be not founded on any Deed, a *Supersedeas* cannot be had : And the Bail you put in, is not to render the Body or pay, &c. but absolutely to pay the Money. After this you must have a *Sci. fac.* or *Ven. fac.* to warn the adverse Party to shew Cause, &c. Upon which you ought to give Notice to the Party if you can ; otherwise get two *Nibils* returned, and a Rule thereupon, by which the Court will proceed to Judgment, *viz.*

That the Plaintiff in the Judgment shall have no Execution of his said Judgment.

Writs filed.

The Writ of *Audita Querela* is then to be filed, and all the Proceedings entered on the Roll ; the Judgment is to be mark'd, by writing under it a Memorandum that such a Term and Roll the said Judgment was vacated, to prevent any Execution thereupon. And if the Defendant appears and pleads, you must make up the Record, and proceed to Trial as in other Cases.

A Writ of Audita Querela.

George, &c. *To his Justices of the Bench Greeting, from the heavy Complaint of A. B. of, &c. We have received, That whereas one*
C. D.

C. D. of, &c. did such a Day, &c. reciting the Bond and Judgment, with a Release, &c. afterwards had; And afterwards, &c. of him A. B. &c. whereof the said A. B. hath supplicated us, That a fit Remedy be provided for him by us in this Particular; And because we would not that the said A. B. be any ways injur'd in this Part; and willing to be done what is just, We Command you, That hearing the Complaint of him A. B. in this Part; And calling before you the Parties aforesaid; And hearing, (weighing) the Reasons on both Sides, you Cause full and speedy Justice to be done to him A. B. as of Right, and according to the Law and Custom of England, (ought) is to be done. Witness my self, at Westminster 10th Day of March, &c.

To proceed on Statutes Merchant or Staple, *Statutes Merchant.* you are first to carry your Statute or Copy thereof, to the Clerk of the Crown in Chancery, who will make out a *Capias si Laicus*, take him if a Layman, upon which you return a *Nihil*, or a *Mortuus est*, he has nothing, or he is dead, of Course, thus:

The within named A. B. is a Layman, and not found; Or, he is dead in my Bailiwick.

G. H. Esq; Sheriff.

Then you are to file this Writ and Return *Extents* (after they are copied) with the *Custos Bre-* *thereupon.* *vium*, and make out Extents to the several Sheriffs of Counties where the Defendant hath any Lands; upon this each Sheriff is to impanel a Jury, and enquire what Goods and Chattels Lands and Tenements the Co-

The Practising Attorney:

must hath, and make Return of all that can be found.

Upon which, the Attorney for the Plaintiff must bring an Ejectment for the Lands, and Trespass for the Goods against those that detain them.

Of Proceedings against Privileg'd Persons, in B. R.

*Inst. Leg. 106, 108.
Privileges of Peers, &c.*

IN the *Laws and Statutes* relating to the *Practice of an Attorney*, in the Beginning of this Treatise, I have inserted our Laws, as they now stand as to the *Privileges of Peers and Members of Parliament*, and how and in what Manner you are to carry on Prosecutions against thhm; so that I shall here immediately proceed to Suits against *Attornies*.

*Inst. Leg. 79.
Privileges of Attornies, and how to proceed against them.*

If your Suit be against an Attorney or Clerk, or Officer of this Court, you are not to arrest them: But you are first to file a Declaration against the Party privileg'd, and then deliver him a Copy thereof, and give Rules in Order for his Plea: And if your Declaration and these Rules are delivered and served in Time, he must plead the same Term. And the like is to be observed if such Attorney, Clerk, or Officer be Plaintiff, and the Declaration is delivered, and the Rules given in Time; for then the Defendant is to plead the same Term, and cannot imparl over to the next, tho' the Action be for Debt on Bond, and not for Fees. This ought to

be remembred to prevent Executions when they are least feared.

Where an Attorney is Plaintiff, he cannot have special Bail, where a common Person cannot have it; unless it be for Fees as a Minister of the Court. Where one that is privileged in one Court, sues another who is privileged in another Court, he that is sued shall not have Privilege. A Serjeant at Law has no Privilege; nor a Barister who constantly attends this Court, but he ought to be sued in all transitory Actions in *Middlesex*, where his Business and Attendance lies. No Attorney, &c. ought to be privileged where he sues or is sued in *Auter Droit*, as if he be Trustee, Executor, &c. for his Privilege is personal, and not to be applied but as he is an Attorney of the Court; and therefore he shall not have Privilege in an Action brought by him and his Wife, or where his Wife is arrested.

In what Cases no Privilege allowed.

Privilege extends only to such Attornies, &c. who have an immediate Dependance on the Court, and not to their Servants, or Dependants. A privileged Person shall not be allowed his Privilege upon a Motion in Court; but he must appear and plead his Privilege. And an Attorney, tho' he doth not practise, yet he shall have his Privilege, so long as he continues an Attorney on Record.

In what County Actions laid.

A Clerk of this Court may lay a personal Action in the County where the Court sits, tho' the Cause of Action did arise in another County: but not in real Actions, for Privilege does not extend to such. One that hath a Suit depending in this Court, is privileged

The Practising Attorney:

privileged from Arrest in attending the Court, and going to and from the same, from his House or Lodgings.

Where an Action is brought against any Attorney, &c. of this Court, without filing a Declaration against him, he may plead his Writ or Attachment of Privilege, and supercede the Action.

An Attachment of Privilege for a Clerk of the Court of B. R.

GEorge, &c. To the Sheriff of S. Greeting:
We Command thee, That thou Attach A. B. C. D. if they may be found in thy Bailiwick, and keep them safely, so that thou may'st have their Bodies before us at Westminster, on — Day next after, &c. To answer to E. F. Gentleman, one of the Clerks of Edward Ventr's Chief Clerk of our Clerks, assigned to inroll Pleas in our Court before us, according to the Liberties and Privileges for such Chief Clerk and his Clerks, from the Time whereof the Memory of Man is not to the contrary, used and approved in the same Court of a Plea of Debt, &c. and have there then this Writ. Witness, &c.

If it be for an Attorney say, *To answer to E. F. Gentleman, being one of the Attornies in our Court before us, according to the Liberties and Privileges for such Attornies, from the Time whereof the Memory of Man, &c.*

Of Originals in B. R.

ATtornies being better skill'd in the Method by Bill, &c. Originals are little used in this Court; but in some Cases, as in Ejectment, &c. the Practice of it is necessary to be understood: And there is this Advantage, that a Writ of Error upon a Judgment in Ejectment, by Original, cannot be brought, or at least is not returnable, but during the Sitting of a Parliament, which is of great Use for the speedy getting into Possession.

Inst. Leg.
94, &c.
Originals little us'd in B. R.

Proceedings on Originals.

Arrest.

The Proceedings in this Court by Original, are the same in Effect with those of C. B. only it does not meddle here in Actions of Debt, Detinue, Covenant, or Account, tho' it does in all other personal Actions; whereas the Court of C. B. in their Proceedings by Original, take in all manner of Actions whatsoever. But in both Courts it is made Use of for two Purposes, viz. either to arrest the Party, or sue him to the Outlawry. To proceed to Arrest, by Original, if your Action be Trespas, you must draw a Precipe, thus:

Lond. ff. If A. B. shall make thee secure, &c. then put, &c. C. D. late of, &c. To answer to the foresaid A. B. of a Plea, why with Force and Arms the Close and House of him A. in the Parish of the Blessed Mary of the Arches, in the Ward of Cheap, he broke, and other

The Practising Attorney:

ther Enormities he did to him, to the great Damage of him A. and against the Peace, &c.

Original returnable in the King's Bench in the Octaves of Hillary, &c. wherefoever, &c.

E. F. Attorney for the Plaintiff.

For Assault and Battery, Ejectment and other Actions, an Original may be had; but the most usual Original in this Court is, for Actions of Trespas upon the Case, which ought to set forth the whole Declaration, and is as follows:

An Original
in Transgr.
sur le Case.

For Originals
in Trespas,
&c. in Eng-
lish. See Eng-
lish Lawyer,
387 to 394,
and 212 to
220.

Midd. ff. Si A. B. fec. &c. tunc pon. C. D. nup. de, &c. in Com. tuo Teom. de Pfito quare cum idem A. (tali die & anno, &c.) ad spiales instanc. & requisicon. pred. C. Bargantzasset & Vendidisset presat. C. vigint. virgat. (anglice Yards) Panni lanei lati (anglice Broad Cloth) ad Ratam, & Prec. decem & quinq; solidor. pro qualibet virgat. inde Acetiam alias viginti Virgat. al. Panni lanei lati ad Ratam, &c. inde pred. C. postea scilt (eodem die anno & loco supradict.) in Com. pred. in Conf. inde super se Assump. & eidem A. adtunc & ibid. fidel. promisit quod ipse presat. C. pred. Denarior. summas proinde in toto se attingen. ad, &c. libr. legal. monet. Magn. Britann. eidem A. super diem, &c. bene & fidel'r solvere & contentare vellet Cumque etiam pred. C. postea scilt. die, &c. supradict. in Com. pred. indebitat. fuisset presat. A. in aliis, &c. libr. leg'lis monet. Mag. Britan. pro, &c. per ipsum A. presat. C. ante Tempus illud vendit. & deliberat. pred. C. in Conf. inde adtunc & ibid. super se Assump.

Assump. Et eidem A. fidelit. promisit quod ipse prefat. C. pred. Et. libras ult. menc'onat. eidem A. similit. ad vel super diem, Et. pred. bene Et fideliter solvere Et contentare vellet Et idem A. in facto dicit quod pred. C. Postea scilt. tali die, Et. supradict. in Com. pred. tales Promission. Et Assumcon. suas pred. minime curans sed machinans Et fraudulenter intendens, Et. nondum solvit, Et. sed ad hoc faciend. pred. C. (licet per eundem A. sepius requisit.) penitus recusavit Et adhuc recusat ad Dampnum ipsius A. Cent. Librar', Et. Orig. Ret. in Bano Regis in, Et. ubicunque, Et.

The Writ begins, *Georgius Die gratia, Et. Vic. Et. salutem Si C. D. fecer. te Secutum de clam. suo prof. tunc pone per vad. Et salu. pleg. Et. quod sit coram nob. apud Westm. die, Et. quare cum predict. Et. Die Et Anno, apud Paroch. Et. indebitat. fuisset, Et. prefat. A. in Et. lib. pro, Et. eidem C. ad spial. instanc. Et requisition. ipsius, Et. ante tempus illud vendit. Et deliberat. Et sic inde indebitat. existen. Et. fidel. promisit, Et. (as in the Declaration to the End) Et h'cas ibi nomina pleg. Et hoc Breve Teste, Et.*

All Originals in Trespafs on the Case, *Inst. Leg. 97.* where the Damages are laid above 40*l.* pay a Fine to the Crown, viz.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
From 40 <i>l.</i> to 100 Marks —	0	6	8
From 100 Marks to 100 <i>l.</i> —	0	10	0
From 100 <i>l.</i> to 200 Marks —	0	13	4
From 200 Marks to 400 Marks —	0	16	8
From 400 Marks to 200 <i>l.</i> —	1	0	0
And			

*Capias taken
out.*

And so every 100 Marks more, you pay 6s. 8d. and for every 100 l. further, 10s.

The Original is the Foundation of the *Capias*, and all the subsequent Process, the Return whereof is usually the *Teste* of the *Capias*; but most commonly the *Capias* is first taken out before the Original, by leaving the Precipe with the *Filizer*, who makes you out a *Capias* thereupon, and afterwards carries the Precipe to the *Cursitor*, who makes out an Original; and the *Filizer* after it is returned files it with the *Custos Brevium*. To gain a Term in your Proceedings, the Precipe must be carried to the *Cursitor* of the County where you intend to try the Cause, within the first Week of the Term, and he will make out your Original returnable the first Return of the next preceding Term; but Care is to be taken that the Original does not bear Date before the Cause of Action.

*See 2 Salk.
290.*

When you have your Original under Seal from the *Cursitor*, you may get the Sheriff of the County, to return a *Nihil* upon it, or you may do it your self, thus:

Pleg. de Prof. Joh'es Doe Ric'us Roe.

*Infrano'iat. A. B. Nihil habet in Bal-
li'a mea per quod Attach. potest.*

E. F. Arm. Vic.

*Return of
Writs, Decla-
ration, Plead-
ings, &c. on
Originals.
Inst. Leg. 98.*

The Return of the *Cap.* is to be 15 Days after the Return of the Original, and so it must be in every other Writ, as well to the Outlawry as to the Arrest, except in the Return of *Craft. Animar.* in *Mich'as* Term. If the Defendant can't be taken where the Action

Acti-
ty, S
Sher
Capi
the
torne
Copy
dant,
and
the f
Rule
call
Plea,
And
Paper
it to
it be
signs
Filize
the C
if the
summ
and I
Actio
the P
be fo
in Ba
Term
upon
at the
Trial
must
Day
tried.
thus
and fi

Action is laid, but resides in another County, upon a *Non est Inventus* return'd by the Sheriff, the *Filizer* will make out a *Testatum Capias* into any other County. And when the Defendant appears, the Plaintiff's Attorney draws his Declaration, and delivers a Copy of it to the Attorney for the Defendant, (receiving 8 *d.* per Sheet of his Client, and 4 *d.* per Sheet of the Defendant;) and the same Term he declares, having given Rules to plead with the Secondary, he is to call upon the Defendant's Attorney for his Plea, and then draw up his Replication, &c. And it being by Original, he makes up the Paper Book himself, and delivers a Copy of it to the Attorney for the Defendant. If it be an Issue, he gives Notice of Trial, and signs his *Venire Distr. Jur.* &c. with the same *Filizer*, and seals the Record of *Nisi prius*, with the *Custos Brevium*, or with the Chief Justice, if the Action be laid in *Middlesex*; and then he summoneth Witnesses, draws his Breviates, and Proceeds to Trial as before is directed in Actions by Bill. When the Trial is over, the Plaintiff's Attorney, in Case the Verdict be for his Client, sometime before the Day in Bank (the Effoin-Day of the subsequent Term,) must bring his Issue to be entered upon the *Filizer's* Rolls, if the Cause be tried at the Assizes in the Country; but if the Trial be in *London* or *Middlesex*, then he must enter it sometime before the next Effoin-Day after the Sitting at which the Cause was tried. After the Plaintiff's Attorney hath thus entered his Issue, he must give Rules, and sign Judgment with the Secondary, and then

then enter up his Judgment on the *Filizer's* Issue-Roll, make out his Writs of Execution, and take the usual Fees of his Client for his Proceedings therein.

Note ; By the Statute 13 Car. 2. cap. 2. in Writs of *Venire fac. Distring. Jur. &c.* sued out after Issue join'd, to be tried by a Jury, and after Judgment in Debt, or other personal Actions, as also in *Ejeccon. firmæ* by original Writ, there need not be 15 Days between the *Teste* and Return of such Writs, or of any Writ of *Hab. Corp. Jur. Fi. Fac.* or *Ca. ad Satisfac.* except it be on a *Ca. sa.* to make Bail liable, or where any Exigent is to be awarded after Judgment.

Of Outlawries and Proceedings therein, in B. R.

See Inst. Leg.
100, &c.
Directions to
sue to Out-
lawry the se-
veral Writs,
&c.

WHEN you intend to sue any Person to an Outlawry, in Debt, Account, Trespafs, &c. You are first to make out a *Precipe*, if it be for Debt, or a *Pone* in Case, Trespafs, &c. and carry it to the *Cursitor* of the County where you lay your Action, and he will make an Original thereupon. When you have your Original, carry it to the proper *Filizer* of the County, who will make you a *Capias*, *Alias*, and *Pluries*, or for Expedition, you make them out your self; each of which must have 15 Days between the Date and the Return, are return'd *non est Inventus* of Course, and filed with the *Custos Brevium*; and are of the following Form.

Georgius,

Ge
bis qu
Huf.
fuet. b
atlagat
tunc en
quod ba
ubicanq
&c. Et
at. pret
Ball'a
Teste,
Georg
Ticomit

Georgius, &c. Vic. London Sal'tem Precepimus vobis quod Capiatis A. B. nuper de, &c. si invent. fuerit in Balli'a vestra & eum salvo Custod. ita quod habeatis Corpus ejus cor. nob. a die, &c. ubicunque tunc fuerimus in Angl. ad Respondend. C. D. de Pl'ito Transgr. super Casum Et h'eatis tunc ibi hoc Breve Teste, &c.

A Capias in Case. See the English Forms in the English Lawyer, Title, Trespass, &c.

If an *Alias Capias*, say, Pr. vobis sicut *Alias* preceperim. quod capiatis, &c. ut supra.
If a *Pluries*, it is the same, only saying *Pluries* instead of *Alias*.

When your *Capias*, *Alias*, and *Pluries*, are returned of Course severally, you carry your *Pluries* to the Exigenter of the County, who will make out your *Exigent* and *Proclamation*, which is to be sent down to the Sheriff of the County where the Defendant lives. These are made out thus:

Georgius, &c. Vic. London Salutem Pr. vobis quod Exigi faciatis A. B. nuper de, &c. de Hust. in Hust. quousque secund. Legem & Consuet. hujus partis Regni nr. Britann. voc. Angl. utlagatur si non comperuit. Et si comperuerit tunc eum capiatis & salvo Custod. faciat. Ita quod habeatis Corpus ejus cor. nob. a die, &c. ubicunque, &c. ad Respondend. C. D. de Pl'ito, &c. Et unde vos ipsi nobis mand. a die, &c. ult. preterit. q'd pred. A. non fuit invent. in Balli'a vestra & habeatis ibi hoc Breve Teste, &c.

A Writ of Exigent. Note; these Latin Writs may be seen in English in the English Lawyer, or (by observing the former Examples in this Book) may be easily Translated.

Georgius, &c. Vic. South'ton Sal'tem Cum A Proclamatione nostris London nuper precepimus quod

A Proclamation to the County.

quod Exigi facerent A. B. nuper de, &c. in Com. tuo de Hust. &c. (as in the Exigent) ideo tibi precipimus quod per Statut. de Anno Regni Dom. Eliz. nuper Regin. Anglie tricesimo primo inde provis. Proclamari fac. prefat. A. B. tribus sep'alibus diebus secund. form. Statuti illius unde un. Proclamac' predict. fiat ad vel prope maxim. usuale ostium Ecclesie Parochialis ubi est inhabitans, quod se reddat prefat. Vic' n'ris Lond. Ita quod habeant Corpus ejus cor. nob. ad prefat. Termin. ad Respondend. prefat. C. D. de pred. Pl'ito & habeas ibi hoc Breve Teste, &c.

Testes and
Returns of
Processes.

All these Writs are to bear Teste from the Return of each other: And your Exigent and Proclamation you carry to the proper Sheriffs, and call for their Returns at the Time when returnable: And there must be five County-Court Days between the Teste and Return of the Exigent, if your Action be laid in the Country; and five Hustings if it be laid in London. These County-Courts are held but once in three Weeks; and if there be not County-Court Days enough in the Country, or Hustings in London, (as it may sometimes fall out) you must sue out another Writ called an *Allocatus*, which is to bear Teste with the Return of the former Exigent, and be returnable the next Return after the fifth County-Court Day, &c. The *Allocatus* is of this Form.

A Writ of
Allocatus.

Georgius, &c. Vic. Midd. Salutem Pr. ti
quod Allocatis illis quatuor Com. ad quos A.
nuper de, &c. in Com. tuo Team. exact. fuit

non comperuit prout tuipe nobis in, &c. (such a Return) ult. preterit. mand. ipsum A. B. ad prox. Com. tuum ult'ius Brig. facias quousq; secundum, &c. Et h'as ibi, &c.

In the several Processes to the Outlawry, you must take Care that they all agree with the Original, that each of them may warrant the other: And you ought also to file a Warrant of Attorney for the Plaintiff the same Term you sue out the Exigent, to prevent Error in the Proceedings. And your Exigent and Proclamation being returned, the later is to be filed with the *Custos Brevium*, and the Exigent with the Filizer of the County; whereupon the Filizer will make out your *Capias Utlagatum* into any County you desire, where you can discover the Defendant hath any Estate: And this Writ is either *General* or *Special*; *General*, to take the Body of the Defendant only; and *Special*, against his Body, Lands, and Goods.

Exigent and Proclam.

Georgius, &c. Vic. London Salutem Pr. vo-
his quod non omittatis propter aliquam Libertatem
in Com. Civit. vestr. quin capiatis A. B.
super de, &c. Utlagat. in London die, &c. ult.
preterit. ad Sextam C. D. de Pl'to Transgr. su-
per Casu. si invent. fuerit in Ballia vestra &c
salvo custodiat is ita q'd habeatis Corpus e-
ius cor. nob. die, &c. ubicunque tunc fuerimus
Angl. ad faciend. & recipiend. quod Cur. nostr.
considerav. in hac parte Et h'eat is ibi hoc Breve
teste, &c.

A General Capias Utlagatum.

B 2

A Special

A *Special Capias Utlagatum* begins, *Pr. tibi quod non omit. propter aliq. Lib. Com. tui*
A Special Capias Utlagat. *quin per sac'm probor. Et legal. hominum de eo-*
dem Com. tuo diligenter inquiras que Bona Et
Catalla Terras Et Tenement. A. B. nuper de,
Et c. Et illa per eor. sac. Extendi Et apprecia-
ri fac. Et c. Ac pro eo q'd idem A. B. sic utlagat.
latitat Et discurrit in Com. tuo in nostri con-
temptum, Et c. Tibi precipimus q'd pred. A. B.
ubicunque in Bal'ia tua, Et c. Invenir. capias Et
eum salvo Custod. Et c. (See the Note before
 Page 257.

Terms.

The two chief *Terms* to commence Suits to Outlawry, are *Easter* and *Michaelmas*. And you are to take Care not to begin in *Hillary* Term, for then tho' the Action be laid in *London*, where the Hustings are often held, the Defendant will not be outlawed in less than four Terms, by Reason of Shortness of *Easter* Vacation: But if you begin in any other Term, the Outlawry will be finished in three Terms, if your Original be returnable the first Return of the Term.

**Outlawry
 superseded.**

A Man is outlawed if he doth not appear at the Return of the *Exigent*, if it be returned with a *Quinto Exactus*, and *non Comperuit*. But the Defendant may appear upon the *Exigent*, and *supersede* the Outlawry; in prosecuting which *Supersedeas*, he is not obliged to put in Bail, be the Debt what it will, but is only to enter an Appearance by Attorney with the Filizer; and the Plaintiff's Attorney must declare against him, as by Original: When the Plaintiff's Attorney has declared, he makes a Copy of the Declaration

claration for the Defendant's Attorney; which being delivered, the Defendant's Attorney must prepare to plead and answer the same Term; and then the Attorney for the Plaintiff draws up his Issue as in other Cases; and if there be special Pleadings, makes up the Paper-Book according to the Practice where the Proceedings are by Original: If it be an Issue, he makes up the Record, and Seals the same; and then gives Notice of Trial, as in Cases by Bill, and makes out his Writs of *Venire*, *Distringas* and *Subpœna*, &c. and Proceeds to try the Cause. And it is to be observed, that all Writs of *Nisi prius*, *Venire fac.* *Distring.* *Jur.* &c. and all Manner of Writs of Execution after Judgment had on these Proceedings, must be returnable *cor. nob. in Octabis Sancti Hillar.* or some other Return, not on a Day certain. An Outlawry is said to be a Judgment in itself.

There are several Causes of reversing an Outlawry, as by Error in returning the *Exigent*, which frequently happens; mistaking the County-Court Days; misnaming either of the Parties; or omitting or mistaking the Sheriff's Name, &c. Also it may be reversed for Error in the Return of the Proclamation, or for want of filing the same according to the Statute, for Defect of Return, Mis-Return, or Mis-Entry thereof; or for some Mistake in the Original *Capias*, *Alias*, or *Pluries*; for all which diligent Search must be made with the Filizer and *Custos Brevium*, and it is usual to take Copies of all the Processes from the Entries on the Rolls, and to enter upon the same Rolls an Averment of such Defects as are found

Reversal of Outlawries, Directions therein, &c. Inf. Leg. 104.

in the Proceedings: And having found sufficient Error in the Original or other Process, you must put in Bail for the Defendant, (if the Debt or Damage be 10 l.) for his Appearance to a new Original within two Terms, and pay the Debt and Damages recovered, or render his Body to Prison, if he be condemned in the Action. Then the File of Writs, whereon that you alledge for Error is filed, must be brought into Court, and the Counsel is to inform the Court of the Defect you assign for Error; and if the Court allow thereof, the Outlawry will be reversed by the senior Judge: Which Reversal with the Bail-piece, must be entered by the Filizer upon the same Roll with the Process of Outlawry. And the Outlawry being thus reversed, the Defendant is discharged; but the Plaintiff may at any Time within two Terms, on a new Original, declare against him for the same Cause of Action, and proceed therein as in other Actions by Original.

There is another Method to reverse Outlawries, by Writ of Error, directed to the Chief Justice and his Associate; which Writ is made out by the Cursitor, and returned by the Clerk of the Errors, &c. But this Way of Reversal is seldom used. See *Instit. Legalis* 78, 79. of Provision made by Stat. 4. 5. W. & M. for reversing Outlawries by Attorney, &c.

Of Ejectments in B. R.

See *Instit. Leg.*
136, &c.
Ejec' firmæ
where
brought.

Ejectment, call'd *Ejectione firmæ*, is brought where one makes a Lease to another for a Term of Years, and a Third ousts

ousts the Lessee; then the Lessee shall have this Action against the Disturber, and recover his Term and Damages. But this is now become the common Action for Trial of Titles to Land, and supplies the Place of many real Actions formerly in Use; and lies to recover the Possession of Lands, &c. illegally kept from the right Owner.

The Method in prosecuting this Action is made more short and easy than in Times past; for there is no Occasion for a Lease to be made and delivered upon the Premises to the Lessee, and Ouster and Ejectment of him, as there was formerly; (unless there be no Tenants in Possession, when the old Way must be observed;) The modern Way of Practice is to draw a Declaration, and therein to feign a Lease to him that would try the Title, and also feign a casual Ejector or Defendant in the Declaration, and then deliver the Declaration to the Ejector, who sends or delivers a Copy of it to the Tenant in Possession or his Wife, and gives Notice to him at the Bottom in Writing, to appear and defend his Title, or that he (the Defendant) will suffer Judgment by Default, whereby he (the Tenant) will be turned out of Possession. To this Declaration the Tenant may appear by Attorney, and consent to a Rule to be made Defendant in the Place of the casual Ejector, and to confess a Lease, Entry and Ouster, and at the Trial to stand upon the Title only: Also one, who hath Title to the Land, may on Motion be made Defendant in the Action with the Tenant in Possession, to defend his Title, and join in

*Methods of
prosecuting the
Action.*

The Practising Attorney:

the Rule to confess Lease, Entry, and Ouster, &c. If the Tenant in Possession doth not appear and enter into the abovementioned Rule, in due Time and Service of the Declaration; then upon Affidavit made, that the same was left at his House, or served upon him, with Notice to appear as aforesaid, the Court upon Motion made will order, that Judgment be enter'd against the casual Ejector, or feign'd Defendant, and the Tenant will be turned out of Possession. And if the Tenant doth appear, and doth not consent to the Rule aforesaid, the Court will order that he shall consent, or else Judgment shall be entred *ut supra*, and he shall be ousted.

No Arrest.

The Defendant is not arrested on these Ejectments of late Years introduced into Practice; (but in the ancient Method of Proceedings by Ejectment it is otherwise, where you must begin by *Original* against the Person who ejects the Lessee;) for the first Process is your Declaration, which is not amendable after Delivery without Leave of the Court, and is drawn thus;

A Declaration in Ejectment, in the King's Bench.

Dorset, ff. *Johannes A. queritur de Georgio B. in Custod. Mar. &c. pro eo videlt. quod cum quidem Thomas C. Gen. sexto die Maii Anno D'ni, &c. apud Paroch', &c. in Com. pred. Dimisisset Concessisset & ad firmam Tradidisset prefat. Job'i un. Messuag. quinq. acras prati & quinque*

quinque acras pastur. cum pertin. situat. Jacen.
 Et existen. in Paroch. de, &c. in Com. pred. Ha-
 bend. Et Tenend. Tenementa pred. cum pertin.
 prefat. Joh'i Et assign. suis a die, &c. tunc
 ultimo preterit. usque plenum finem Et terminum
 quinque Annor. extunc prox. sequen. Et plenar.
 complend. Et finiend. Virtute cujus quidem Di-
 mission. idem Joh'es in Tenementa pred. cum
 pertin. Intravit Et fuit inde Possessionat. quousq;
 pred. Georgius postea scilt. eodem sexto die Maii
 anno supradict. Vi Et Armis, &c. in Tenementa
 pred. cum pertin. in Et super Possession. ipsius
 Johannis inde Intravit Et ipsum Johannem a
 firma sua pred. termino pred. suo inde nondum
 finit. Ejecit Expulit Et Amovit ipsumque Jo-
 hannem a Possessione sua pred. inde extratenuit
 Et adhuc extratenet Et al. Enormia ei adtunc Et
 ibid. intulit contra pacem dict. Dom. Regis nunc
 Et ad Dampn. ipsius Johannis Decem librar.
 Et inde produc. sectam, &c.

John Brooks for the Plaintiff } Pleg. &c.
 William Selby for the Defendant }

The same in English :

Dorset, ff. J. A. complains of G. B. in Custo-
 dy of the Marshal, &c. For that to wit, That
 whereas one T. G. Gentleman, on the sixth of
 May (in such a Year at such a Place) had
 demised, granted and to Farm let to the fore-
 said J. one Messuage, five Acres of Meadow,
 &c. with their Appurtenances, situate lying and
 being in the Parish of, &c. in the County afore-
 said ; To have and to hold the Tenements afore-
 said, with their Appurtenances to the foresaid J.
 and his Assigns from such a Day, then last past,
 until

The Practising Attorney :

until the full End and Term of 5 Tears from thence next following, should fully be compleat and ended, by Virtue of which said Demise the foresaid J. entred into the Tenements aforesaid, with their Appurtenances, and was thereof possessed, until the foresaid G. afterwards, to wit, the same 6th Day of May in the Tear aforesaid, with Force and Arms, &c. into the Tenements aforesaid, with the Appurtenances in and upon the Possession of him J. thereof entred, and him J. from his Farm aforesaid, (his Term aforesaid thereof being not yet ended,) ejected, expelled and amoved, and hath held, and as yet doth hold him J. out of the Possession thereof; and other Enormities he hath then and there done to him, against the Peace of the said Lord the now King, and to the Damage of him J. ten Pounds, and thereupon he brings his Suit, &c.

Mr. F. F.

*The Notice at
the Foot of
the Declarati-
on.*

You may perceive by this Declaration, that I am sued as a casual Ejector for the Mesuage and Lands herein contained, whereto I have no Title; if therefore you claim any Title to the same, or any Part thereof, you must appear the next *Hilary Term*, in his Majesty's Court of King's Bench at Westminster, by some Attorney of that Court, and make your Defence, otherwise Judgment will be had against me by Default, whereby you'll be turned out of Possession. I am,

Yours, &c.

George B.

*In the King's
Bench.*

Job'ent A. Plaintiff }

&

Georgium B. Defendant. }

1

A. B.

A. B. of, &c. maketh Oath, That he this Deponent on, &c. last past did deliver to E. F. Tenant in Possession of the Premises, a true Copy of the Declaration in Ejectment hereto annexed: At the Foot of which Declaration is a Notice for the said E. F. to appear the then next, and now present *Hillary Term* in this Court, and defend his Title, otherwise Judgment will be entered against him by Default. And this Deponent further saith, That he told the said E. F. That if he did not appear and defend his Title the then next, and now present *Hillary Term*, he would be turned out of Possession.

Affidavit of Service of a Declaration of Ejectment.

A. B.

Sworn such a Day before me.

If the Tenant appears, he must enter into a Rule, *ut supra*, and then is made Defendant in the Declaration, and must plead Not guilty, &c. or else Judgment will be entered by Default, in like Manner as when he does not appear; and on such Judgment a Writ of Possession issues: But when the Tenant appears, and enters into a Rule, &c. then instead of your first Defendant the casual Ejector, you put into your Declaration, which must be drawn *de Novo*, the new Defendant mentioned in the Rule, and his Addition, &c. and after the Declaration leaving out the Notice, &c. Then the Defendant's Attorney must plead *non Cul.* and you draw up your

Pleadings, Trial, &c.

Declaration

Plea. Issue,

*Issue.**Trial.*

Issue, leaving out all the Memorandum, a Copy of which, as well as of the Declaration, is to be delivered to the Defendant's Attorney, and give him Notice of Trial. Having made your *Venire* and returned it, make out your *Distringas* returnable the first Return of the ensuing Term; and make up the Record, omitting the Memorandum and beginning with the Declaration; you are then to seal your Record, and prepare *Breviates*, &c. In which you must recite the Declaration and Plea briefly, and that the Defendant is to confess Lease, Entry, and Ouster: Then set forth the Plaintiff's Title, beginning with the Person last seized in Fee of the Premises, under whom the Lessor claims, and so deduce the Title down to your Client the Plaintiff, proving the Deeds, &c. and after Trial proceed according to former Instructions.

*Judgment.**Execution.*

And Note; in this Action you are to recover both the Possession and the Damages, and accordingly you have a double Execution, viz. 1st, An *Haberi Facias Possessionem* for the Possession of the Lands; and 2dly, A *Capias ad Satisfaciend.* against the Body, or a *Fi. Fa.* against the Goods and Chattels for the Damages: But the Entry of the Judgment is usually with a *Remittit Damna*, if against the casual Ejector.

Stat. 6 Ann.
c. 18.

Note; By an Act 6 *Ann. c. 18.* Persons who are possessed as Guardians or Trustees or in Right of their Wives, or having Estates determinable upon Life or Lives, holding over without Consent of the Party entitled, shall be adjudged Trespassors, &c. and are liable to this Action of Ejectment. *Vide Stat. 4 Ann. c. 16. ante p. 3.*

The

The METHOD *of*
PRACTICE
In the COURT *of*
COMMON-PLEAS.

HAVING already in the Beginning of the *Proceedings in*
foregoing Discourse, given a *general* C. B.
View of the Laws and Statutes rela-
tive to the *Practice of an Attorney*; and of
the Rules and Orders both of B. R. and C. B.
and also shewn the several Jurisdictions and
Duties of each Court, and its Clerks and
Officers; the different Stiles of the Courts,
Testes and Returns of Process, &c. respec-
tively; I shall now Treat of the Practice of this
Court somewhat more briefly than in the
former, but yet with Regard to all necessary
Observables.

Of Actions commenced, Arrests,
&c. in C. B.

THE Actions cognizable by this Court *Inst. Leg.*
come hither one of these five Ways, *211.*
viz. 1st, By Service of Process, where the Actions.
Debt

The Practising Attorney:

Debt, &c. is under 10 l. by Stat. 2 Geo. 2. c. 22. which see before, p. 3. § 52. 2dly, By way of Original, as Arrests and Outlawries. 3dly, By Bill of Privilege, or Attachment for or against privileged Persons. 4thly, Out of inferior Courts of Record by *Hab. Corp.* or Writ of Error. And 5thly, Out of inferior Courts not of Record, by *Recordare*, *Pone*, *Accedas ad Curiam*, Writ of false Judgment, &c.

*Precipe and
Pone.
See Inst. Leg.
212.*

Your Method of Proceeding in this Court is by *Precipe* or *Pone*; (which are instead of general Originals) and these are drawn upon Paper, and delivered to the *Filizer* of the proper County, which serves both for the Original and *Capias*. If it be in an Action of Debt in *London*, the *Precipe* runs thus:

London, ss. *Precipe A. B. nuper de London Gen. &c. (as in the Alias dict.) quod Reddat C. D. 100l. Orig. ret. tres Trin. Cap' ret' tres Mich.*

John Brooks.

Originals.

The Return of the Original is the Teste of the *Capias*, and the Original is the Warrant to the *Capias*. If you would have more than one Defendant therein, (as you may put four, tho' but one Plaintiff,) then in an Original for Debt, you are to draw your *Precipe* double, as *Precipe A. B. quod Reddat, &c. Precipe C. D. &c. quod Reddat E. F. &c. Ret. &c.* Or to avoid the Fine due on a *Precipe*, draw a *Pone* for a *Capias* only, which in Debt, is as follows:

South'ton

South'ton, ff. Si A. B. fec. &c. Pone, *Inst. Leg.*
 &c. C. D. nuper de, &c. in Com. tuo 213.
 Gen. Cl'm freg. apud, &c. Acetiam in
 Debito pro 100 l. Ret. Quind. pas.

John Brooks.

If your Action be for a Book-Debt or Promise, after *Acetiam*, say, *In Cas. super Assumpcon. pro 50 l. Ret. &c.*

See for these
Forms in the
Practice of
B. R. ante.

If your Action be in Account, say, *Quod Reddat C. D. rationabil. Comput. suum de Tempore quo fuit Receptor Denar. ipsius C. &c.*

If it be in Detinue, *Quod Reddat C. D. Unam Equam, &c. pretii 10 l. quas ei injuste Detinet Ret. &c.*

If in Covenant, after the *Alias dist.* say, *Ad respondend. C. D. de pl'to quod teneat ei Convenc. inter eos fact. secund'm vim form. & Effectum quarundam Indentur. int. eos consec. Ret. &c.*

If in Trespass, say, *De pl'to quare Vi & Armis Cl'm freg. apud, &c. Ret. &c.*

In Assault and Battery, *De pl'to Transgr. & insult. Ret. &c.* And in Case, say generally, *De pl'to Transgr. super Casum Ret. &c.* Or if you would have special Bail, and try it the same Term your Writ is returnable, say, *De pl'to Quare Cum, &c.* (setting forth the Cause of the Action specially) *ad Dampnum ipsius A. 50 l. Ret. &c.*

But the first Process (whereof by Stat. 2 Geo. 2. c. 22. a Copy is to be served) is usually (for London) in this Form, viz :

Georgius,

Copy of Pro-
cess served in
London.

* Note ; J.
Doc is only a
Defendant to
agree with the
Forms which
are Plural.

Georgius, &c. Vic. Lond. Sa' tem. Precipimus
vobis quod capiatis A. B. nup. de W. in civit.
pred. Taylor & John Doe *. si invent' fuerint
in Balliva v'ra & eos salvo custod. ita qd. h'eatis
corp. eor' coram Justic. v'ris apud W. a die Ste.
Trin. in tres Septiman. ad respondend. C. D. de
pl'ito quare vi & armis cl'm ipsius C. D. apud
London pred. freger. & al. Enormia ei intuler.
ad grave Dampnum ipsius C. & contra pacem
n'ram, & h'eatis ibi tunc hoc bre. T. R. Eyre a-
pud W3 o Maij Anno reg. n'ri. 3. 4to Junij
1730. Eyre.

T. Williams by J. Brooks pro Quer.

Note ; By the late Act (2 Geo. 2.) For
regulating Attornies, all Writs and Process,
Labels annex'd, and Warrants thereon are
to be subscrib'd or endors'd with the Attor-
ney or Clerk in Court's Name, in a common
legible Hand ; and if he be not the Person
immediately retained by the Plaintiff, then
also with the Name of the Attorney so im-
mediately retained.

Alias dict. Ac-
etiam Capias.

If your Precipe be on any Speciality,
or Indenture, you must recite the *Alias dict.*
Literatim therein : And where the Cause of
Action is Debt, and requires Bail, the best Way
is to take out an *Acetiam Capias*, the Original
to which is only a bare *Clausum fregit* ;
and when you come to Judgment thereon,
you may file a new Original to warrant
such Judgment : Whereas if your *Capias* be
special, by *Precipe quod Reddat*, &c. and there
should be any Mistake either in the Name,
Alias dictus, or Sum, it may be pleaded in
Abatement, and a new Original afterwards

will not Cure it; but you are forced to discontinue your Action, paying Costs, and to begin *de Novo*: Or if the Defendant slips to take this Advantage of it, he may do it *Inst. Leg.* afterwards; when Judgment is had by Confession or Default, by Writ of Error: And so he may where the *Teste* of the Original is before the Day of Payment of the Debt, by the Bond or Bill. ^{213.}

In Case on *Assumpsit*, you may have an *Acetiam* for 10 l. or above, and file new Originals, as in Debt; but you may not have it in any other Action. If on *Indeb. Assumpsit*, it appear at the Trial to be Matter of Account, and no Account is made up and stated under the Hand of the Defendant, the Plaintiff will be nonsuited; for whilst the Account is current, there lies only Action of Account; but when stated under Hand, Action of Debt or *Assumpsit* will lie for Balance. If one *infra sex Annos* do confess the Debt, the Statute doth not help it; but an exprefs Promise will give a new Cause of Action: And an Action may be continued for a Tradesman from the last Goods delivered, where there have been Dealings for a considerable Time. *New Originals, in what Cases had.*

If you intend to proceed to Trial the same Assuable Term your Writ is to be returned, and would try it at the Assizes, and it happens that the Defendant to be arrested lives in *Middlesex*, then you are to draw a *Special Capias* for the Country, and a *Testatum* for *Middlesex*, and so have a Warrant upon the *Testatum Ret.* This *Special Capias* *Ibid. 214. Spec. Cap.*

is fineable; and therein you usually set forth the Substance of your intended Declaration.

But See and Note *The English Lawyer* 180, 181, &c.

The Form of a Special Capias.

A Special Precipe for an Original, to continue an Action, &c.

See before 251 of Originals.

George, &c. *To the Sheriff of South'ton, Greeting, We Command thee that thou take C. D. late of, &c. so that thou hast his Body before our Justices at Westminster, in (on) the Octaves of St. Hillary, to answer to A. B. Gent. of a Plea, why, whereas, &c. To the Damage of him A. 50l. and have (then) there this Writ. Witness R. E. Knight, at Westminster.*

George, &c. *To the Sheriff of Middlesex, Greeting, If A. B. makes thee secure for prosecuting his Clamor, then put by Gage and safe Pledges C. D. late of, &c. in thy County, Gent. That he be before our Justices at Westminster (such a Return-Day) to shew why, Whereas the foresaid C. (such a Day at such a Place) was indebted to the said A. in such a Sum of lawful Money of this Kingdom for diverse Goods, Wares, &c. to the same C. by the same A. at the special Instance and Request of him A. before that Time sold and delivered; And being so indebted he the foresaid C. in Consideration thereof afterwards, to wit, the same Day, Year, and Place abovesaid, did take upon himself, and to the same A. did then and there faithfully Promise, That he the said C. would well and faithfully Pay and Content to the said A. the same Sum of, &c. when he should be thereto afterwards Required — And also, Whereas the*
foresaid

foresaid C. the same Day, &c. in Consideration that the foresaid A. at the special Instance and Request of him C. had before that Time sold and delivered to the same C. (for the Use him C.) divers Parcels of Wine (to such a Value) be the same C. did take upon himself, and to the same A. did then and there faithfully Promise, &c. (as before) (or it may be laid as a Quantum Meruit, &c. according to the Precedents in the English Lawyer, pag. 175 to 180, concluding thus) To the Damage of him A. 100 l. And have (then) there the Names of the Pledges, and this Writ. Witness, &c.

In all Cases where a *Capias* is Special, in Debt, Covenant, Trespass, &c. reciting the Cause of Action at large, if the same be made returnable the first Return of a Term, the Defendant cannot insist upon an *Imparlance*; but is obliged to plead the same Term: And if the Action be laid in *London* or *Middlesex*, he must plead within four Days after the Receipt of the Declaration, and the Rule to plead entred and expired.

Inst. Leg. 215; Pleadings.

Of Appearances and Bail in C. B.

A Ppearances upon Writs in the Common Pleas must be entred with the *Filix*, within 8 Days after the Return of the Process, as in the *King's Bench*, or the Defendant shall forfeit 5 l. But upon Writs of Privilege, both Common Appearances and Special Bail are entred upon the *Prothonotaries*

Inst. Leg. 219; Appearances entred.

Vide ante, of the Plaintiff's entring an Appearance for the Defendant.

Remembrance, and his Clerk attends the Judge upon Special Bail.

Com. Appearance taken, on Motion and Special Bail.

If a Defendant moves that a common Appearance may be taken, the Court will order the Plaintiff to shew his Cause of Action by Affidavit, wherein Oath is to be made that. [Note; the Plaintiff now must make Oath of his Debt before the Issuing of the Writ, and the Sum Sworn must be indorsed thereon, for which Sum and no more Bail is to be taken] 10*l.* is due to justify the insisting upon Special Bail; and if the Debt be small, the Plaintiff must also swear he is in Danger of losing it; or otherwise he shall not have Special Bail. Where a *Capias* requires Bail, and by Law it should not, the Defendant on making Affidavit he owes not 10*l.* to the Plaintiff, and moving the Court, shall be ordered to give a common Appearance; unless Cause be shewn to the contrary by a short Day; and this may be also done at a Judge's Chamber. See the Practice of *Capias's* in C. B. and the Reason of Bail thereupon. 1 *Mod.* 236.

Bond for Appearance.

Where a Man is taken on a *Capias*, he shall not be discharged 'till he give Bond to appear, except the Plaintiff or his Attorney consent to an Appearance without Bail; and the Warrant of Attorney for such Appearance is to be subscribed or accepted by the Defendant's Attorney, and not revocable, and an Attachment is to issue against the Bailiff offending herein, or the Attorney refusing to appear, who may be likewise put out of the Roll of Attornies.

In putting in Bail before a Judge, the *Prothonotary's* Clerk is to go with you, if it be for a privileged Person; but if it be for any other Person, the *Filizer* of the County, or his Clerk, attends the Judge with you: And if it be taken by Commissioners in the Country, you carry it with an Affidavit of its being so taken to a Judge to allow it, and thence to the *Filizer* of the County who keeps it. Bail is to be justified only in Court, and the *Filizer* of the County in such Cases is to bring his Book along with him, for which you pay him 3 s. 6 d. Fee.

Where the Defendant puts not in Special Bail when required, you are to get the Sheriff to assign over his Bail-Bond, and take out a *Capias* upon it, (directed to the Coroner, if the same Sheriff be an Officer; but that Writ, 'tis said, requires only an Appearance, and any Attorney may back the Warrant for Appearance. If the Plaintiff be non-suit, and then commences a new Action for the same Cause, he shall not have Special Bail in the new Action, tho' he might have insisted upon it in the first.

Special Bail not put in, Bond to be prosecuted.

When a Declaration is delivered on a Bail-Bond, the Bail at any Time before they have pleaded, or Judgment signed against them for Want of a Plea, may bring in the Prisoner in Discharge of themselves: But after the Return of the second *Sci. fac.* against the Bail, they cannot yield up the Prisoner in Discharge. Tho' in the Vacation they may carry him to a Judge's Chamber to be committed any Time before Judgment. On a Writ returnable the first Return of any

Bail when discharged.

Term, you cannot proceed on the Bail-Bond 'till the last Return of that Term; or if the Writ be made returnable the last Return, not 'till the Beginning of the next Term, and a *Capi* returned and filed.

If the Plaintiff declares in another County than that to which the Writ was directed; (except on a Process of *Testatum*) or in a greater or other Sum than mentioned in the Writ on which the Arrest was made and Bail taken, the Bail shall be discharged and not be liable.

Prisoners discharged, on Appearance entered, &c.

A Defendant being committed to Prison by Process of this Court, or *Hab. Corp.* Upon his Entering an Appearance with the *Prothonotary*, on a *Plaint*, or an Attachment of Privilege; or with a *Filizer*, in Case of other Process, and giving Rules to declare, and serving thereof, the Plaintiff is to declare before the End of the next Term after Commitment, or the Defendant shall be discharged of his Imprisonment by *Superseatas* at the End of the next Term after.

Appearances of Prisoners on *Hab. Corp.*

If a *Capias* be returned in Court *Non est Inventus* against a Prisoner in the *Fleet*, he is obliged to appear on a *Hab. Corp. ad respondend.* at the Suit of a Stranger, as well as of him by whom he is imprisoned; and to answer a Declaration, or Judgment shall be obtained against him.

Where a Defendant appears on an *Exigent*, *Hab. Corpus*, *pluries Capias*, &c. or upon Bail put in on an *Hab. Corp.* or Outlawry to be reversed: Such Defendant must answer the first Term afterwards. He who reverses an Outlawry, must have an Attorney of Record

cord present, to give an Appearance to a new Original; of which Appearance, &c. Notice is to be given.

The Form of Bail-Pieces upon Appearances and Special Bail, which is taken before a Judge, you'll find in the *Practice of the Court of King's Bench*; so that I shall only insert in this Place the Form of Bail taken before Commissioners in the Country.

Form of Bail-pieces.

Inst. Leg. 222.

On a Copy of the Writ on Parchment, the Bail-Piece is to be ingross'd thus:

J. Brooks At-
torney for the
Defendant. } *The Manucaptors of the De-
fendant J. Doe of, &c. in
the County of, &c. and R.
Sale of, &c. in the County
of, &c.*

The Party himself in 20 l.

Each of the Manucaptors in 10 l.

*Taken and acknowledged (such a
Day and Year) to * be valid here-
after) before,*

A. B. A Commissioner.

* De bene
Esse.

But if the Defendant be not present, the Bail are usually bound in double the Sum in the Writ; *aliter* in the single Sum. And the Condition of the Recognizance is that the Defendant and his Bail owe to the Plaintiff so much, to be levied on their Goods, &c. on Condition, if the Defendant is condemned in the Action, he shall pay the Condemnation; or render himself to Prison, &c.

Vide more, Bail in B. R. and the Statutes concerning Attornies.

*Of Declarations, Imparlances, and
Counts, in C. B.*

*Inst. Leg. 223,
Etc.
Time to de-
clare.*

IT has been held by some Practisers, that the Plaintiff hath only from that Term wherein the Writ is returnable, till the last Day of the following Term, to declare against the Defendant. But the Practice is now, that the Plaintiff, after the Return of the Writ, has two Terms to make out his Declaration; and if he doth not within that Time declare, the Defendant upon a Rule given, may sign a *Non Prof.* and have Costs allowed him, usually 1 l. 6 d. 8 d. for which he may take out an Execution, or bring Action of Debt.

*Delivery of
Declarations.*

The Delivery of a Declaration on the Es-join-Day is not good to have a Plea the same Term. If a Declaration be delivered with Blanks, for only Matter of Form, as Time, Place, or Name, the Defendant's Attorney must call on the Plaintiff's Attorney to fill them up: And if they are not filled up in a reasonable Time, the Attorney for the Defendant may demur thereto; but he may not demur without such Calling; if he does, the Demurrer will be set aside by the Court.

*Declarations,
when amend-
ed, and when
not.*

If any Mistake be committed in Drawing the Declaration, and the Plaintiff gives Notice of it before the *Esjoin-Day*, he may amend the same, and the Defendant shall not take any Advantage of the Mistake: And on Affidavit of such Notice, no Plea in Abatement shall avail, to have Costs; but the

Defendant

Defendant shall plead in chief: And if there be no Notice given, and the Defendant hath either pleaded in Abatement or demurred, the Plaintiff before Joinder in Demurrer, or taking Issue, may amend, and force the Defendant to plead presently, on paying 13 s. 4 d. Costs, or give him a further Impar lance without paying Costs: But after Demurrer, or Issue join'd; and when the Pleadings are entred on the Roll, the Plaintiff cannot amend his Declaration, but may enter a Discontinuance, and proceed *de novo*.

Where the Defendant hath pleaded the General Issue, the Plaintiff without paying any Costs may, before he has deliver'd a Copy of the Issue, amend his Declaration, or afterwards with Costs: But upon amending your Declaration, you must shew the Rule of Court, and tender the Costs thereby order'd. After the Declaration delivered, the Attorney may give Rules to answer, which must be entred in that *Prothonotary's* Office where the Plaintiff's Attorney enters Causes: And by the Courfe of the Court the Defendant is to answer the Term of Appearance, if the Writ be returnable at the Beginning thereof, and it be an Issuable Term: But where the Action is laid in *London*, the Defendant has commonly an Imparlance or Time to plead 'till the next Term.

Of *Impar lances* there are two Kinds, *General* and *Special*; after a General Imparlance the Defendant cannot exhibit a Plea in Abatement to the Writ, Privilege of any Court, &c. for he must in this Case plead the same Term, or crave a Special Imparlance:

lance: But here it is to be observ'd, that many Pleas may be pleaded after a Special Imparlanee, which will not be allowed after a General. And since the Practice of filing new Originals, entring Imparlanecs is almost difus'd: For as there is frequent Occasion to amend Declarations, after Imparlanee entered, that cannot well be done; besides, if you enter your Imparlanee, and have Judgment afterwards by *Default* or *Confession*, you are yet obliged to bring a new Original, or your Proceedings will be vicious. And your new Original must be returnable in that Term whereof your Imparlanee is entered; but as Judgment is usually signed at the End or after a Term, then it is too late to bespeak an Original of the preceding Term, of which to be good it must be; and in Prudence it ought to be bespoke before you have or see you shall have Judgment; Because if the Cause comes to Issue, there is no need thereof; the Want of an Original or an Imparlanee being no Error after Verdict, though the Want of Warrants of Attorney is. Vide *Seet. 3.* of the Stat. for *Amendment of the Law*.

Proceedings by Bill and Original.

But where your Proceedings are by *Bill*, and not by *Original*, as against an Attorney, &c. If you give an *Imparlanee*, you must enter it: And in all *Real Actions*, Imparlanee is to be given, and enter'd. Where Imparlanee is given, you may enter Rules to plead in the common Remembrance, without paying any Thing: But if you give no Imparlanee, the Rules are to be entered with the Secondary. In case an Imparlanee be for an Attorney,

Attorney,

Attorney, or other privileg'd Person, it must always be to a Day certain.

If your Declaration be either by or against an Attorney, at the End you must say,

Pledges of Prosecution { J. Doe.
R. Roe.

A Declaration in Debt, &c.

Easter, the 4th of King George 2d.

Somerſet, ſſ. A. B. late of, &c. in the *A Declaration*
County aforeſaid, Gentleman, otherwiſe called on a Bond in
A. B. of, &c. in the County of S. Gent. was C. B.
ſummoned to answer to C. D. Gentleman, (or, if
at the Suit of the Sheriff, ſay,) To answer to
E. F. Eſq; Sheriff of the County aforeſaid of a
Plea, That he render to him 100l. which he
owes to him, and unjuſtly detains, &c. And
whereof the ſame C. by G. H. his Attorney
ſaith, That whercas the foreſaid A. on the 1ſt
Day of April, in the 3d Year of the Reign of
the now King at, &c. by his certain writing
obligatory had granted himſelf to be bound to the
ſame C. (or, to the ſame E. then being Sheriff
of the County aforeſaid, by the Name of E. F.
Eſq; Sheriff of the foreſaid County of S.) in
100l. to be paid to the ſame C. when thereof
he ſhould be required; yet the foreſaid A. al-
tho' oftentimes thereto required, the foreſaid
100l. to the foreſaid C. hath not yet paid, but
that to pay to him hath hitherto denied, and ſtill
doth deny; whereof he ſaith he is the worſe,
and bath Damage to the Value of 20l. and
thereof he brings his Suit, &c. And he brings
into Court the Writing, (Obligation) aforeſaid,
which Teſtifies the Debt aforeſaid, in the Form
aforeſaid;

aforesaid; the Date whereof is the Day and Year abovesaid, &c.

The Li. Lo. or Imparlance, on delivering these Declarations upon Bonds, is thus : *And the foresaid A. by, &c. his Attorney comes and defends the Force and Injury when, &c. and prays Oyer (bearing) of the Writing Obligatory aforesaid; and it is read to him, &c. Also he prays Oyer of the Condition of the same Writing; and it is read to him, in these Words: The Condition of this Obligation, &c. (reciting the whole Condition) which being read and heard, prays License of imparling thereon here, until the Morrow of Holy Trinity, and bath it, &c. The same Day is given to the foresaid C. here, &c.*

This Li. Lo. is an Imparlance in this Case: but on other Declarations the Imparlance is only as follows :

An Imparlance to a Declaration.

And the foresaid A. by, &c. his Attorney comes and defends the Force and Injury when, &c. and prays License of imparling here, until, on, &c. (the first Day of the next Term) and bath it, &c. The same Day is given to the foresaid C. here, &c.

A Special Imparlance is after the following Manner: *And the foresaid A. by, &c. his Attorney comes, and saving to himself all Advantages, as well to the Writ as to the Declaration aforesaid, prays License of imparling thereon here, until, &c.*

A Declaration for Money due upon Account.

A. B. late of, &c. was summoned to answer to C. D. in a Plea, That he render to him 50l. which he owes to him, and unjustly detains, &c. And whereof the same C. by, &c. his Attorney saith, That he the foresaid A. (such a Day, Year

Year and Place) accounted together with the
 foresaid C. of diverse Sums of Money to the fore-
 said C. by the foresaid A. before that Time due
 and payable; And upon that Account the fore-
 said A. was found in Arrearage towards the
 same A. in 50l. whereby an Action accrued to
 the said C. to demand and have of the foresaid
 A. the 50l. aforesaid, yet the foresaid A. al-
 tho' often thereto requested, hath not yet paid to
 the foresaid C. the foresaid 50l. but that (same)
 hitherto to Render (pay) hath altogether denied,
 and yet doth deny; whereof he saith, that he is
 the worse, and hath Damage to the Value of
 30l. and thereof he brings his Suit, &c.

A. B. late of, &c. in the County aforesaid, *A Declaration*
 Gentleman, was summoned to answer to C. D. *in Debt, on a*
 of a Plea, that he render to him 100l. which *Mutuatus*
 he owes to him, and unjustly detains, &c. and *(Borrowing.)*
 whereof the same C. D. by E. F. his Attorney
 saith, That whereas the foresaid A. such a Day
 and Year, at, &c. had borrowed of the same
 C. the foresaid 100l. to be paid to the same C.
 when he should be thereto requested; yet the fore-
 said A. tho' often thereto requested, hath not
 yet paid the foresaid 100l. to the same C. but
 that to him he hath hitherto denied to pay, &c.
 whereof he saith, that he is the worse, and hath
 Damage, &c.

Note; A Mutuatus is often had upon a
 Warrant of Attorney to confess Judgment
 without a Bond.

A. B. late of, &c. was summoned to answer *A Declaration*
 to C. D. of a Plea, That he render to him 30l. *upon an E-*
 which he owes to him, and unjustly detains, &c. *misset, for*
Goods sold.
 And

The Practising Attorney:

And whereof the same C. by, &c. his Attorney saith, That whereas the foresaid A. such a Day and Year, at, &c. had bought of the same C. one Gelding for the foresaid 30 l. to be paid to the same C. when he should be thereto requested; yet the foresaid A. tho' thereto often requested, hath not yet paid the foresaid 30 l. to, &c. as above.

In Case say, — A. B. late of, &c. was attached to answer to C. D. of a Plea of Trespas upon the Case; and whereof the same C. by H. J. his Attorney, Complains, why whereas, &c. And Note; in Trespas, Case, Trover and Ejectment, the Form is Attachiat. fuit: (he was attached) But in Debt, Covenant, Account, Annuity, Detinue and Replevin, Summonitus fuit, (he was summoned) &c.

*A Declaration
for Trespas
and Assault.*

A. B. late of, &c. in the County aforesaid, was attached to answer to C. D. of a Plea, why with Force and Arms, &c. at, &c. he made an Assault on him C. and him beat, wounded, and evilly treated, so that it was despaired of his Life; and other Enormities he then and there did to him, to the grievous Damage of him C. and against the Peace of our Lord the King, &c. whereof he saith, that he is the worse, and hath Damage to the Value of 100 l. and thereof he brings his Suit, &c.

*A Declaration
in Slander.*

*A. B. was attached to answer to C. D. of a Plea, why whereas the same C. was a good and faithful Subject of the Lord the now King, and of Good Name, Fame and Reputation, &c. yet the foresaid A. such a Day and Year, and at such a Place, in the County aforesaid, from a
pre-*

pre-conceived Malice, contriving and maliciously intending to hurt and injure the said C. in his said Name, Fame and Reputation, and to bring him the said C. into Trouble, Vexation and Infamy, he the said A. did then and there, in the Presence of diverse good Subjects of the said Lord the now King, speak, utter, publish, and declare of, and concerning the said C. these false, feigned, scandalous and opprobrious Words following, to wit, Mr. A. B. is, &c. By Reason of the said speaking, and publishing of which said false, feigned, scandalous, &c. Words, he the said C. was not only grievously hurt in his good Name, Fame, Estate and Reputation, wherein he was before time unstained and untouched; but also diverse good Subjects of the said Lord the now King, did afterwards, and by reason of the speaking and publishing of the said Words, altogether refrain from the Converse of the said C. and refused to deal with or correspond with him; whereof he saith, That he is very much the worse, and hath sustained Damage to the Value of 200 l. and thereof he brings his Suit, &c.

A. B. late of, &c. and C. D. late of, &c. *A Declaration*
were attached to answer to E. F. of a Plea of *for Waste, in*
Trespass upon the Case: And now the same E. *Houses, &c.*
by, &c. his Attorney Complains, why, where-
as the same E. holds one Messuage, &c. with
the Appurtenances in, &c. in the County afore-
said, for the Term of his Life, the Reversion
thereof after his Death to, &c. and his Heirs
belonging, the foresaid A. and C. such a Day,
Year and Place, &c. one Stable, Parcel of the
Tenements aforesaid, with the Appurtenances
therein

therein standing, and being, did pull down and carry away; and 30 Posts, 1000 Pales, and 60 Rails, 6 wooden Shelves, to the Value of, &c. to the Messuage and Tenements aforesaid affixed, did take and carry away to the Damage of him E. 60l. &c.

*A Declaration,
or Count, in
Dower.*

A. B. Widow, who was the Wife of T. B. Gent. by, &c. her Attorney Demands against C. D. the third Part of one Messuage, one Barn, one Stable, &c. with the Appurtenances in, &c. as the Dower of her A. of the Endowment of the aforesaid T. her late Husband, by Writ of the Lord the King of Dower, whereof she hath nothing, (de d'ito unde nil habet) &c. And the foresaid E. by, &c. his Attorney comes and demands the View of the Tenements aforesaid, with the Appurtenances, &c. and hath it, &c. Day is given to the Parties aforesaid here, until from the Day of Easter in 15 Days, &c.

*A Count, or
Declaration, in
Assize.*

Somerfet, ff. The Assize comes to Recognize if A. B. C. D. and E. F. unjustly, and without Judgment have disseized G. H. of his Free Tenements (Freehold) in, &c. within thirty Years now last past, &c. and whereof the same G. by, &c. his Attorney Complains, That A. C. and B. disseized him of one Messuage, &c. with the Appurtenances, &c. whereupon the Assize aforesaid by the Assent of the Parties aforesaid, because of the Shortness of the Time, remains to be taken before the Justices at the Assizes, and those whom the Lord the King shall associate to them, until the next Assizes, to wit, such a Day then next following at, &c. in the County

County aforesaid, now next to be held. Therefore let the Sheriff cause, (make) to come then there the Bodies of the Recognitors, &c. And let there be a Decem Tales appointed, and in the mean time, &c. The same Day is given as well to the Parties aforesaid, as to the Recognitors of the Assize aforesaid, to be then and there, &c.

A Count signifieth the same as the Original Declaration on any Process; but is more used in *Real* than *Personal* Actions, as Declarations are more applied to Actions *Personal*. Dower is where a Man is seized of Lands in Fee-Simple, &c. and marries a Wife and dies, the Wife by the Common Law, after the Death of her Husband, shall have a third Part of such Lands, &c. as were his at any Time during the Coverture, to hold during her Life. *Assize of Novel Disseisin* lies where a Tenant in Fee-Simple, &c. is Disseised of his Lands or Tenements, &c. And *Assize of Mortdancestor*, is brought where a Man's Father, Mother, Brother, Sister, &c. dies seized of Lands, held in Fee-simple, and after his Death a Stranger abateth.

Real Actions.

Of Pleas and Demurrers in C.B.

IF in any Action the Defendant pleads a General Plea or Issue, as is most usual, there is no more requisite but that the Attorney for the Defendant do put his Hand to the Plaintiff's Attorney's Docket-Book; and that done, the Plaintiff's Attorney is to draw up.

Inst. Leg. 227.

Pleas drawn up.

up the Plea, and make a Copy of the Issue, and deliver it to the Defendant's Attorney, who must receive it, and pay for entering his Plea; and then they usually give Warning for Trial. But if the Defendant plead Specially, his Plea is to be under a Serjeant's Hand; (also if the Plaintiff reply Specially, or the Defendant demur to a Declaration, the Case is the same) and to be given to the Defendant's Attorney.

Want of Plea. If the Defendant, on Rule to answer, does not plead before the Rule is expired, the Plaintiff's Attorney may afterwards enter up Judgment by *Nil dicit*: And the Defendant, on pleading any General Issue, may (after Rule given) Nonsuit the Plaintiff, if he do not enter his Issue; and thereupon get Costs sign'd by the Prothonotary, and enter up Judgment.

Dilatory Pleas. Upon a Suit on a Bail-Bond, if the Court give Leave to plead in Chief, *viz.* to the Principal Action, you must not plead a dilatory Plea. After a *Respondeas Ouster*, on Demurrer and Judgment, and Rule given, the Defendant is to plead forthwith, or the Prothonotary will sign Judgment. But in other Cases it has been adjudg'd a standing Rule *per Cur.* That the Prothonotary must receive a Plea left in the Office at any Time before Judgment sign'd, tho' the Rule to plead is expired. But it has been known to be denied, after the Rule of four Days had been out.

Various Pleas, and how pleaded. If you intend to plead a Tender, in Action of Debt, you are not to take an Imparalance; because after Imparalance you are e-

stopped to say *Uncore Prift*; nor can you plead *Nil debet* to a Debt on Bond, but the Plaintiff may demur to such Plea. But if there be any Mistake in the Declaration of the Date of the Bond, the Defendant may plead *Non est factum*. If one under Age pretends to be of full Age, and enters into a Bond, he may avoid the Bond by Pleading *Infra Etatem*; but you may indict him for a Cheat in the Crown-Office.

A Plea being entered, and the Roll brought into Court, may not be alter'd: A Defendant got a Rule to amend his Plea, and thereupon pleaded a new Plea; the Court would not at first allow it, alledging a Rule to amend is no Authority to plead *de novo*; but because a Title was in this Case in Question, they at length gave Leave to plead that Plea. On a Demurrer, before Joinder in Demurrer you may amend, paying Costs; and oftentimes after Joinder, *before argued*, the Court permits the Defendant to amend his Plea, on Payment of Costs.

*Pleas amend-
able, and
withdrawn. 1
Inst. Leg. 193.*

If the Defendant has demurred, and the Plaintiff joined, the Court often suffers him to withdraw his Demurrer, and plead; but this will not be granted, if the Plaintiff has been put by a Trial. Where the Defendant either demurs or joins in Demurrer, and is over-ruled, he has no *Respond' Ouster*, (*further Answer*) but shall be condemned presently, and Costs allowed, and the Judgment against him is the same as by Default: But if it be ruled against the Plaintiff, he shall only lose his Action, and pay no Costs, the Entry being only, *Quod Querens nil Ca-*

piat per Breve, (That the Plaintiff take nothing by his Writ.) And generally, when upon Argument the Plaintiff's Default comes to be discovered, on his praying it, the Court allows him Liberty to amend, paying Costs, and orders the Defendant presently to plead to Issue. But where a Demurrer is to a Defendant's Plea in Abatement, a *Respond' Ouster* is granted, if the Plea be found insufficient.

Inst. Leg.
194.

Demurrer, and
Proceedings
thereon.

After a *Demurrer is join'd*, the Defendant is bound to receive and pay for one Book immediately, and the Plaintiff having entered it on the Roll; delivers the Roll to the Secondary, and makes a Motion for a *Consilium*, a speedy Day, to argue it; which the Court grants of Course on the Secondary's Reading the Record: Then the Defendant must receive and pay for two Books more, and the Demurrer must be entred by the Plaintiff in the Court-Book with the Secondary, who on his Rule sets down the Day appointed for Argument, at least four Days before the Demurrer is argued. One Book is to be delivered to the Chief Justice, and another to the next Senior Judge by the Plaintiff; and the Defendant is to deliver two Books to the other two Judges, paying 2 s. with each Book. The Demurrant argues first; and in case the Defendant refuses to receive and pay for his two Books, his Counsel will not be permitted to plead; but the Plaintiff having deliver'd all four to the Judges, will be allow'd it in Costs: The Court hears but two Counsel in a Day, *viz.* one of a Side, and seldom gives Judgment

ment the same Day ; and if desired on either Side, (unless the Case be very plain) will hear further Arguments the next Term.

If you move for a Day to be heard and argue your Demurrer, the Beginning of the Term, it will come on the same Term ; otherwise the next. The whole Record is not to be read on opening a Demurrer, unless the same be to the Declaration only : Where it appears to be for Delay, the whole Record will be heard by the Court, tho' there be a Plea, &c. And if they find it meerly for Delay, Judgment will be given presently. *Haw argued.*

It is often practis'd, where the Plaintiff's Action is just and right, the Defendant's Attorney, without any pleading, will yield to a Judgment, either by *Non sum Informatus*, or Confession, so as the Plaintiff will stay Execution 'till a Time agreed upon : And it is commonly done after this Manner, in the Attorney's Docket-Book : *Judgment without Plea*

South'ton, ff. Brooks for Baker

Selby for Williams.

I am not informed, so that Execution may stay until the Octaves of Hillary.

Per J. Glyde.

This may also be done on the Declaration ; and upon a Judgment thus yielded to, Costs may be taxed by the Prothonotary, and the Defendant will be saved in his Person and Charges. But if the Defendant's Attorney pleads to the Action, you may join Issue, and go to Trial by *Nisi prius* at the next Assizes. *Costs.*

*Non Assump-
sit intra sex
Annos.*

And the aforesaid A. by, &c. his Attorney, comes and defends the Force and Injury when, &c. and saith that the foresaid C. ought not to have his Action thereof against him, because he saith, that he hath not taken upon himself, (promised) at any Time within 6 Tears before the Day of suing forth of the Original Writ of him C. in Manner and Form as the foresaid C. hath above complained against him, and this he is ready to aver ; whereof he prays Judgment if the foresaid C. ought to have or maintain his foresaid Action thereof against him, &c.

*Soloit, or
Payment,
according to
Promise,*

And the foresaid A. by, &c. to because he saith, that after his Promises and Undertakings aforesaid, made in the Form aforesaid, and before the Day of the suing forth of the Original Writ of the foresaid C. to wit, such a Day in the abovesaid 4th Tear of the Reign of the said Lord the now King, he the said A. at such a Place, &c. well and faithfully paid to the foresaid C. the foresaid 20 l. according to his Promises and Undertakings aforesaid, and this he is ready to aver ; whereof, (whereon) he prays Judgment, if the foresaid C. ought to have or maintain his Action thereof against him, &c.

*Non Culpa-
bilis, &c.*

*And the foresaid A. &c. to when, &c. And saith, That he is in nothing Guilty of the Promises above imposed, (charged) upon him as the foresaid C. hath above against him complained, &c. If in Trespass, say — That he is in nothing Guilty of the foresaid Trespass above, &c. and if in Assault, that he is in no-
thing*

Trespass.

thing Guilty of the foresaid Trespass and Assault, &c. And of this he puts himself on the Country, &c.

And the foresaid A. by, &c. his Attorney ^{Justification} comes and defends the Force and Injury when, for Words
&c. and saith, that the foresaid C. ought not ^{spoken.} to have his foresaid Action thereof against him, because he saith that the foresaid C. before the foresaid Day, in the Tear, &c. aforesaid, to wit, such a Day and Year, with Force and Arms, to wit, with Clubs, Staves and Knives, broke and entered the Close of the same A. at, &c. aforesaid, and one Instrument called a, &c. to the Value of, &c. of the Goods and Chattels of him A. then and there found, he the said C. then and there feloniously Stole, and took, and carried away, against the Peace of the Lord then now King; which said Goods and Chattels above specified, after the Felony aforesaid done and perpetrated, by the said C. in the Form aforesaid, were found at D. &c. in the Hands and Possession of him C. By Pretext of which said Felonies, the same A. afterwards, to wit, the Day and Tear aforesaid, at, &c. did openly and publicly Speak, Declare and Publish that the said C. was a common Thief, &c. as it was lawful for him (or, as he well might) and this he is ready to aver; whereupon he prays Judgment if the said C. ought to have his Action against him, &c.

And the foresaid C. saith, that he for a- ^{The Replication, and Issue thereon.} ny thing before alledged by the foresaid A. ought not to be precluded, barred from having his Action aforesaid, because he saith that he is in nothing

thing Guilty of the Felonies aforesaid, nor of any of them as the foresaid A. hath above alleged, &c. and this he prays may be inquired by the Country. And the foresaid A. likewise, &c. Note; This to me seems a very strange Issue in an Action on the Case, but the Book is so, therefore *Quære*.

Inst. Leg.
230.

Of Issues and Records, &c. in C. B.

Issues how
made up.

THE Court of Common Pleas makes no Use of Memorandums in making up Issues, as the King's Bench does; unless it be in special Cases, as on Bill against an Attorney, &c. They only write at the Top the Prothonotary's Name, and the Term, and begin with the Declaration thus:

Cooke. *Trinity the 7th of King Geo. the 2d.*

Somerſet, ff.A.B. late of, &c. in the County aforesaid Gentleman, was attached to Answer to C. D. of a Plea of Trespass upon the Case; and whereof the same C. by, &c. his Attorney Complains, &c. (verbatim, as in the Declaration.) And thereof he brings his Suit, &c.

Having written the Declaration, in a new Line, begin the Issue: For C. B. very seldom continues any *Imparlanes* in their Entries; tho' at the Bottom of Declarations, a *Li. Lo.* is usually given to the next Term.

And

And the foresaid A. B. by, &c. his Attorney, Issue on non comes and defends the Force and Injury when, Assumpsit. &c. and saith that he did not take upon himself (promise) in Manner and Form as the foresaid C. hath above declared against him; and of this he puts himself on the Country, and the foresaid C. likewise; therefore it is commanded to the Sheriff, that he cause to come here from the Day of Holy Trinity, &c. twelve good, &c. by whom, &c. and who neither, &c. to take Knowledge, &c. because as well, &c.

And the foresaid A. B. by, &c. And saith On nil Debet. that he doth not owe to the foresaid C. D. the foresaid 20 l. nor any Penny thereof in Manner and Form as the same C. hath above declared against him, and of this he puts himself, &c. ut supra.

And the foresaid A. B. &c. And saith that On Non est he ought not to be charged with the Debt afore- Factum. said, by Virtue of the Writing aforesaid, because he saith that that Writing is not his Deed. — And of this he puts himself, &c.

And the foresaid A. B. &c. ought not to have his Action, &c. because he saith, that after On a Solvis in Assumpsit. his foresaid Promises and Undertakings, made in the Form aforesaid, and after the Day of suing forth the Original Writ of the foresaid A. to wit, (such a Day and Tear) he well and faithfully paid to the foresaid C. the foresaid 20 l. according to his Promises and Undertakings aforesaid; and of this he puts, &c.

Ought

A Replication
to the Plea.

Ought not to be precluded (barred) because he saith that the foresaid A. did not pay to him C. the foresaid 20 l. in Manner and Form as the said C. hath above in Pleading alledged, and prays that this may be inquired by the Country, &c.

A Rejoinder
thereon.

And the foresaid A. saith, that (such a Day and Year) abovesaid, he paid to the foresaid C. the foresaid 20 l. in Manner and Form as the same A. hath above alledged, and of this he puts himself, &c.

But Note ; In a Replication in Debt (on a Bond, &c.) you may, after it concludes to the Country, say --- *whereof he prays Judgment*, and his Debt, together with his Damages, which he hath sustained by Occasion of the Detention of that Debt, to be adjudged to him, &c.

Inst. Leg.
235.

Of making up Records in C. B.

Records,

AS to Records, they are to be made up in that Prothonotary's Office where the Cause was first entered: And in like Manner are the whole Proceedings of any Cause to be carried on: For every Clerk or Attorney ought to apply himself to one Prothonotary's Office only, and there makes his Entries, &c. A subsequent Roll may be amended by a former, as the Issue-Roll by the Plea-Roll, and both by the Imparlance-Roll; the former Roll being the Warrant to the Subsequent: But where the first Roll is vitiated,
it

Amendments.

it is not amendable by any other that follows. The *Posse* may be amended by the Issue, or by the Clerk of the Assize's Notes; but 'tis said the Issue-Roll, being made up, is not amendable, because it then becomes a perfect Record, and to amend it would be to alter the Issue. If a Cause be carried down by *Proviso*, the Plaintiff cannot withdraw the Record; for it is now become the Record of the Defendant: And if the Defendant enter a *Ne recipiat* of the Record at the Assizes, it has been adjudg'd he shall have Costs for his Attendance.

In making up your Record, leave a Margin of about an Inch, and near the Top of the Parchment write your *Placita* in small Secretary-Hand, as you do the rest of the Record; but the Word *Placita*, and the first Word of the Plea, Replication, &c. should be writ in great Secretary-Hand, to direct the Sight more easily to them. Write your Record thus:

Pleas at Westminster, before Robert Eyre
Knt. and his Companions, Justices of the Lord
the King of the Bench of Trinity Term, in
the 4th Year of the Reign of the Lord George,
by the Grace of God, King of Great Britain,
France and Ireland, Defender of the Faith,
&c.
Roll the 1st.

Then beginning a new Line at half an Inch Distance, enter the Declaration:

Somerſet, ff. A. B. late of, &c. in the Coun-
ty aforeſaid Gentleman, was attached to Answer
to

The Practising Attorney:

to C. D. of a Plea of *Trespafs upon the Case*, and whereof the same C. by, &c. his Attorney complains, why whereas, &c. (To the End of the Issue) because as well, &c.

Except it be on Death or Change of the Chief Justice, or upon an old Record, in C. B. they write their *Placita* but once; so that 'tis usual to leave an Inch Space betwixt the Issue and *Jurata*: But *Quare* if a *Jurata* be now of any Use since the late Stat. for Regulation of Juries by Ballotting, &c.

After the Record is made up, before Sealing it, your Issue must be entered on a Roll from the *Prothonotary*, or at least you are to make on the same an *Incipitur* of the Issue; and then carry the Record and Roll to the *Prothonotary*, who, on paying him for the Issue, will sign your Record; and if there be Occasion, give back the Roll: This being done, you carry your Record to Mr. *Maidstone's* Office in *Took's Court Chancery-Lane* to be seal'd, and you are to make out your Warrants of Attorney, after this Manner:

Warrants of
Attorney.

Somerſet, ſſ. A. B. puts in his Place E. F. his Attorney, againſt C. D. late of, &c. in the County aforeſaid Gentleman, of a Plea of *Treſpaſs*, &c.

ſſ. C. D. late of, &c. in the County aforeſaid Gentleman, puts in his Place G. H. his Attorney againſt A. B. of the Plea aforeſaid.

These Warrants are to be given to the Clerk of the Warrants, who will sign your Record;

Record; and then you must give it to the Clerk of the *Jurats* to be examin'd, after which Mr. *Maidstone* is to sign, and his Man to seal it.

Having, under the Head of *Issues and Records in B. R.* given the Reader a very curious Precedent of a Record, Plea, &c. conformable to the present Practice; I shall here insert an Issue and Record lately made up, in this Court, in an extraordinary Case, viz.

A curious Precedent both in Latin and English, of an Issue made up in C. B. on Action of false Imprisonment.

Foley. Trin. 3^o Georgii 2di Regis. Ro.---

Norfolk. ff. Rob'tus C. nup. de, &c. in Com. pred. Teom. Attach. fuit ad Respondend. Job'i S. Gen'oso de pl'ito Transgr. super Casum, &c. Et unde id'm Job'es per, &c. Attorn' suu' Queritur q'd cum per Legem & Consuetud. hujus Regni nulla Persona Arrestari vel Attachari debet nec debuit ad sectam alicujus alius Personae in aliqua Acc'one sive secta sine r'onabili Causa Pred'cus tamen Rob'tus machinans & malitiose intenden' presat. Job'em in hac parte minus juste pregravare molestare & inquietare necnon ad causand. eund'm Job'em minus rite Imprisonar. pro Magna Denar. sum'a & ad impediend. & deterrend. Amicos ip'ius Job'is & alios fideles Subditos D'ni Regis ad deveniend.

deveniend. Securitat. & Manucaptor. pro eodem Job'e viceſimo Octavo die, &c. Anno Regni D'ni Georgii 2di nunc Regis Magn. Britannie, &c. Tertio Termino S'ti Mich'is ſine aliquo r'onabil' ſeu probabil. Cauſa falſo & malicioſe Proſequi cauſavit extra Cur. dic. D'ni Regis de Banco hic ſcil't apud Weſtm' in Com. Midd'x quoddam Bre' dict. D'ni Regis de Capias v'sus pred' Job'em per no'en Job'is S. nup. de, &c. in Com. Norf. Gen. tunc Vic. Com. Norf. direct. per quod quid'm Bre' idem D'nus Rex eid'm Vic. Norf. Precepit q'd Caperet pred' Job'em ſi Invent' fuer. in Balli'a ſua Et en' ſalvo cuſtod. Ita q'd b'eret Corpus ejus coram Juſtic. & ti D'ni Reg. apud Weſtm. pred. in Octab. ſci. Hillar. tunc prox' ſequen. ad Reſpondend. preſat. Rob'to per no'en Rob'ti C. de p'ito Tranſgr. ac etiam in quodam p'ito tranſgr. ſup. Caſu. ſup. Aſſumpcon' ad Dampnu' ip'ius Rob'ti quingent. libr. Et q'd heret ibi Bre' illud Virtute cujus quid'm Br'is pred. Robertus poſtea & ante Retorn. ejuſd'm Br'is ſcil't Octavo die Decembr. Anno Regn' d'ci D'ni Regis nunc tertio ſupradicto apud, &c. in d'ito Com. Norf. pred. Job'em falſo & malicioſe Arreſtari & Imprisonari cauſavit & procuravit Et eund'm Job'em ſic Arreſtat. & Imprisonat. ad ſectam pred. Rob'ti virtute Br'is illius per ſpaciū. triū. Menſi'm extunc prox. ſequen. ib'm detin'i cauſavit Quouſq; Cur. d'ci D'ni Regis hic ip'm Job'em ab Imprisonament. ſu. pred. per Bre' d'ci D'ni Regis nunc de Superſedeas eid'm Vic' Norf. direct. Exon'avit ubi revera & in ſto ip'e Job'es tempore proſecuc'o Br'is pred. necnon pred' tempore Arreſtat'o & Imprisonament. ip'ius Job'is ſic ut p'cedat. Et.

fact. mi'e Indebitat. fuit prefat. Rob'to in aliquo Denar. sum' nec hui. id'm Rob'tus aliq'm bu'mo'i Denar. sum. ad Dampn' ip'ius Job'is Cent. Libr. Et inde produc. sectam, &c. Cu. hoc q'd pred. Job'es verifical. vult q'd pred. Rob'tus C. non ult'ius profecut. fuit Bre' suu. pred. versus ip'm Job'em per quod postea scilt' Termino, &c. Anno Regni d'ti D'ni Regis nunc tertio suprad', &c. to Conf. fuit per ean'dm Cur. dic. D'ni Regis nunc hic q'd prefat' Rob'tus nil cap'et. per Bre. suu. pred. sed esset in mia' pro falso Clamore suo inde & q'd pred. Job'es iret inde sine die prout per Record. inde in Cur. d'ti D'ni Regis nunc hic scilt' apud Westm. pred. in Com. Midd. pred. residen. plenius liquet & apparet, &c. Et pred. Rob'tus per, &c. Attorn. suu. ven. & Defend. vim & injur. quando, &c. Et dicit q'd ip'e in nullo est culpabilis de premifs. sup'ius ei imposit. prout pred'us Job'es sup'ius v'sus eu' querit. Et de hoc pon. se super Priam. Et pred'us Job'es inde silit. Jo. precept. est Vic. q'd venir. fac. hic a die s'te, &c. per quos, &c. Et qui nec, &c. ad recogn. &c. Quia tam, &c.

Norfolk, ff. R. C. late of, &c. in the County aforesaid, Teoman, was attached to Answer to J. S. Gentleman, of a Plea of Trespass upon the Case, and whereof the said J. S. by C. D. his Attorney complains, That whereas by the Law and Custom of England, no Person is to be arrested, or ought to be attached, at the Suit of any other Person in any Action or Suit without a reasonable Cause; yet the foresaid R. contriving and maliciously intending the foresaid J. in this Part, unjustly to Aggrieve, Molest and Disquiet

The Practising Attorney:

Disquiet; And also to cause the said J. unrighteously (injuriously to be imprisoned) for a great Sum of Money, and to hinder and deter the Friends of the said John, and other faithful Subjects of the Lord the King, to become Security and Manucaptors for the same J. on the 28th Day of, &c. in the 3d Year of the Reign of the Lord George the 2d, now King of Great Britain, in the Term of St. Michael, without any reasonable or probable Cause, falsely and maliciously caused to be prosecuted, (sued) out of the Court of the said Lord the King of the Bench here, to wit, at Westminster in the County of Middlesex, a certain Writ of the said Lord the King, of Capias against the foresaid J. by the Name of J. S. late of, &c. in the County of Norfolk, Gentleman, to the then Sheriff of the said County of N. directed, by which said Writ the same Lord the King commanded the said Sheriff of Norfolk, that he should take the foresaid J. if he might be found in his Bailiwick, and keep him safely, so that he should have his Body before the Justices of the said Lord the King at Westminster aforesaid, in the Octaves of Hillary then next following, to Answer to the foresaid R. by the Name of R. C. of a Plea of Trespas, and also in a certain Plea of Trespas upon the Case, upon an Assumption to the Damage of him R. 50l. and that he should have there that Writ; by Virtue of which said Writ the aforesaid R. afterwards, and before the Return of the same Writ, to wit, on the 8th Day of December, in the said 3d Year of the Reign of the said Lord the now King, at, &c. in the said County of Norfolk, caused the foresaid J. to be arrested

rested and imprisoned at the Suit of the foresaid J. and caused him to be there detained by Virtue of that Writ, by the Space of 3 Months from thence next following, until the Court of the said Lord the King here discharg'd him the said J. from his Imprisonment aforesaid, by a Writ of the said Lord the now King of Superseas, directed to the said Sheriff of Norfolk; Whereas in Truth and in Fact, he the said J. at the Time of the Prosecution of the foresaid Writ, and also at the Time of the Arrest and Imprisonment of the foresaid J. so made as aforesaid, was no Way indebted to the foresaid R. in any Sum of Money, nor was he the same Robert entitled to any such Sum of Money: To the Damage of him J. 100l. and thereof he brings his Suit, &c. with this (further) that the foresaid J. will aver that the foresaid R. C. no further prosecuted his foresaid Writ against him the said J. whereby afterwards, to wit, in — Term in the Third Year of the Reign of the said Lord the now King aforesaid, &c. to — it was considered by the same Court of the said Lord the now King here, that the foresaid R. should take nothing by his foresaid Writ, but should be in Mercy for his false Clamour thereof, and that the foresaid J. should go thereof without Day, as by the Record thereof, in the Court of the said Lord the now King here, to wit, at Westminster, in the foresaid County of Middlesex residing, doth more fully appear, &c. And the foresaid R. by D. C. his Attorney, comes and Defends the Force and Injury when, &c. and saith that he is in nothing Guilty of the Premises above imposed upon him, (in Manner and Form)

The Practising Attorney:

as the foresaid J. hath above complained against him, and thereof he puts himself on the Country, and the foresaid J. likewise. Therefore it is commanded to the Sheriff, that he make to come here such a Day, &c. 12 good and lawful Men, &c. by whom, &c. and who neither, &c. as usual.

A Venire facias, for Trial.

Georgius Dei Gratia, &c. Vic. S. saltem Precipimus tibi q'd Venire fac. coram Justic. n'ris apud Westm. a die s'te Trin. &c. duodecim liberos & legales homines de Corpore Com. tui quor. quilib't habeat decem Libr. Terr. Tentor. vel Reddit. per Ann. ad minus per quod Rei veritas melius sciri poterit Et qui nec A. B. Quer. nec C. D. nuper de, &c. in Com. tuo, &c. aliqua Affinitate atting. ad faciend. quand'm Juram pri'e inter Partes predict. de Pl'to, &c. Quia tam id'm A. quam pred. C. inter quos inde Contenc'o est posuer. se in Juratam ill. Et h' eas ibi no'ia Jur. Et hoc Breve. Teste Roberto Eyre apud Westm. die, &c. Anno Reg. n'ri quarto.

A Venire for the Trial is thus in English:

George, &c. To the Sheriff of S. Greeting: We command thee that thou make to come before our Justices at Westminster, from the Day of Holy Trin. &c. twelve good and lawful Men of thy Body of the County, whereof each hath 10 l. of Lands, Tenements or Rents by the Year at the least, by whom the Truth of the Matter may better be known, and who neither to A. B. the Plaintiff, nor to C. D. late of H. in thy County, &c. are related by any Affinity

Affinity, to make a certain Jury of the Country between the Parties aforesaid of a Plea, &c. because as well the same A. as the foresaid B. between whom the Contention is, have put themselves on that Jury; and have thou there the Names of the Jurors, and this Writ. Witness Robert Eyre, at Westminster, such a Day in the 4th Year of our Reign.

There need not be 15 Days between the *Teste* and Return of this Writ to try a Cause in the Country; in *London* it is always return'd the last Return of the Term, and the second Return, if in *Middlesex*. As the Issue warrants it, it must not bear *Teste* before the Issue join'd; it is to be made out the same Term Issue is join'd; the last Return upon your Issue-Roll of that Term: But in the Record and *Ven. fac.* the first Return of the same Term you try it, if this be three or four after. And *Note*; where it is returnable the last Return within Term, you cannot have Execution on a Verdict the same Term. 6 Mod. 146.

Where Motions are made to alter *Venues*, 6 Mod. 221.
the Defendant is to make Affidavit of the 2 Salk 667
Place where the Cause of Action arose, and to 670.
his Attorney must make Affidavit ———
in the Margin of the Declaration, of the
Time of his receiving it: And if the
Motion be granted, is to pay the Plaintiff
for a new Original. If after Notice of Trial
the *Venue* be chang'd, you must give fresh
Notice, or the Judgment shall be set aside.

Where the Action is laid in an improper
County, the *Venue* shall be changed *ex debito*. 2 Salk. 669.

2 Sal. 668
to 690.

But in *False Return*, the *Venue* may be from the County where the Return was, or in *Middlesex* where the Writ is filed; and if in either it will not be changed. And in Action of *Scan. Mag.* or on Covenants, or for Money on Bond, or on Escape, you may not change the *Venue*; nor in any Action after Plea pleaded.

*A Habeas
Corpora Furor
tor.
Inst. Leg.
239.*

George, &c. To the Sheriff of S. Greeting: We command thee, that thou have before our Justices at Westminster, from the Day of, &c. or before our Justices assigned to take Assizes in thy County, by Form of the Statute thereof provided. If such a Day, at such a Place, in thy County shall before (that Day) come the Bodies of A. B. C. D. &c. (naming the Jurors with their Additions) the Jurors summoned into our Court before our Justices at Westminster, &c. between G. H. Plaintiff, and J. K. late of, &c. in thy County Gentleman, Defendant of a Plea, &c. to make that Jury and have there this Writ. Witness, &c.

This Writ issues out of C. B. to the same Intent that a *Distring' Jurat'* does out of B. R. You may bespeak it at Mr. Bulstrode's Office, kept at the Examiner's Office at the Rolls, or you may fill it up your self, and carry it thither with your *Venire*; and his Clerk will examine and sign it, and the *Venire* and *Panel* is to be left with him to be filed. Then it is to be sealed, which may be done either before or after the Sealing your Record.

Formerly

Formerly if your Record was not tried at the first Assizes, you might make out a *Plur. Hab. Corpor.* by the old one; and you could not, without committing Error, file a new *Hab. Corp.* upon a new Panel: But this is alter'd by Stat. 7 & 8 W. 3. You must now carry the old Record, or a Copy of it to the Clerk of the Treasury to be examined by the Roll; and he will make out a new Record if the old one be lost, or alter the old one and seal it anew.

The *Hab. Corpor.* must be delivered to the Under-Sheriff at the Assizes to be return'd there: And both it and the Record are then put into the Hands of the Marshal, who when the Cause is call'd delivers them to the Judge, &c. as in *B. R. antea*.

George, &c. A. B. C. D. &c. (being 4 Witnesses and Evidence. A Subpoena ad Testificand. Inlt. Leg. 240.)
Greeting: We command you and every of you firmly enjoyning, that laying aside all other Pretences and Excuses whatsoever, you be in your proper Persons before our Justices at the Assizes to be held at T. in the County of Somerset, such a Day, &c. next ensuing, to testify and say the Truth, in a certain Matter of Controversy now depending in our Court before us, (or before our Justices) at Westminster, undetermined between G. H. Plaintiff and J. K. late of, &c. in the said County of S. Gentleman, Defendant, of a Plea of, &c. and this you nor any of you are by any means to omit on the Penalty of 100l. on every of you. Witness Raymond (or Robert Eyre, &c.

Mr. A. B.

*A Subpoena
Ticket for
Witnesses.*

By Virtue of a Writ of *Subpoena* to you directed, and herewith shewn, You are personally to be and appear before his Majesty's Justices of Assize, on, &c. next, being the, &c. Day of, &c. at Ten of the Clock, &c. in the Forenoon of the same Day, at the Court then to be holden at, &c. in the County of, &c. to testify the Truth according to your Knowledge, in a certain Cause now depending, and then and there to be tried between G. H. Plaintiff, and J. K. Gent. Defendant, in a Plea of Trespass on the Case, on the Part of, &c. And hereof you are not to fail on Pain of 100 l. dated the Day of, &c. in the Year of the Reign, &c. Annoq; D'ni, &c.

If for *London* or *Middlesex*, then say, Appear before Sir Robert Eyre, Knt. Lord Chief Justice, &c. *Mutat' Mutandis*.

*Who may be
Witnesses, or
not.*

A Party interested in a Cause, a Wife for or against her Husband in Civil Cases, Persons attainted of false Verdict, convicted of Perjury or Forgery, of Felony not pardon'd, one *non sana Memoria*, an Alien Infidel, &c. may not be *Witnesses*: But Kinsmen, tho' never so near, Servants, Masters, and others, not infamous, which want not Understanding, and are not Parties in Interest, may be good *Witnesses*; and also a *Jew*, sworn on the Old Testament.

An Attorney may be a Witness, but he is not to be examined against his Client; so may a Counsel on one Side be examined by the other, if served with a *Subpoena*:

One of the Jury may be sworn as a Witness, but then he must be examined on Oath in open Court where there are several Defendants, and one is found Not guilty, or the Plaintiff gives no Evidence against him, he may be sworn and examined: As may also a Legatee to prove a Will, if his Legacy be but small. If one be Bail to the Arrest only, he may be a Witness for the Defendant, but not if he be Bail to the Action. And it has been held where one is made Defendant in a Suit on Purpose to take away his Testimony, he may be examined in that Cause *de bene esse*, and what he says shall be allow'd good Evidence, if the Plaintiff proves no Cause of Action against him.

One that claims Benefit by a Deed, cannot be a Witness to that Deed, nor one concerned in the Title of Land, &c. tho' no ways a Party to the Suit depending. If you have a Deed to be produc'd as Evidence, it is the best way to bring it into the Treasury, and move there that it may be admitted at the Trial by the other Side; upon which if it be refused, the Court will order full Costs of our Witnesses to prove it. The Counterpart of a Deed cannot be produced as Evidence, if the Original be in Being; unless the Party make out that he hath used his utmost Endeavours to procure the Original without Effect: And if it be in the Hands of a third Person, a *Subpoena* with *Duces tecum* may be issued; whereupon, on Failure, the Court will order it to be produc'd.

2 Sal. 691.

Cumb. 46,
248, 337.

2 Salk. 285, It has been adjudg'd, that a Bill in Chan-
 286, 287, 555. cery should be read as Evidence, tho' it be
 not binding Evidence: But neither Bill nor
 Answer shall be read as Evidence in the Com-
 mon Law Courts, except in Trials between
 the same Parties; and even in such Cases it
 has been frequently denied.

Of Trials, Judgments, Execu- tion, &c. in C. B.

*Inst. Leg. 241.
 Proceedings to
 Trial, same
 as in B. R.*

THE Writs and Processes I have last
 treated of, are preparatory to Trial;
 And the Proceedings on Trials in C. B. are
 the same with those in the Court of B. R. If
 the Plaintiff hath given Notice of Trial, and
 does not proceed nor countermand the No-
 tice before the Assizes, the Defendant on his
 or his Attorney's Affidavit of his Attendance,
 may the next Term have a Rule of Course,
 without Motion, for his Costs of Attendance;
 The Rule must be observed by the Plaintiff's
 Attorney, after a Day for him to attend, is
 set down by the Master or Prothonotary; or
 on his Refusal or Neglect, if good Cause be
 not shewn why he did not attend, 26 s. 8d.
 Costs will be taxed at the Foot of the Rule;
 which you are to recover by serving the
 Plaintiff personally with a Copy of the Rule
 and Taxation, and demanding the Money;
 which if he refuses to pay, upon Affidavit
 thereof, and Motion made, the Court grants
 an Attachment against the Plaintiff. If the
 Defendant appoints any one to receive the
 Money,

Money, he is to empower him by Letter of Attorney, and give Notice to the Plaintiff thereof.

After the Defendant hath pleaded, and the Issue is well joined, the Plaintiff is to proceed to Trial, (tho' the Defendant declare he will not attend, or refuses to accept the Notice of Trial,) and shall have a Verdict: Nor can the Plaintiff waive his Trial, and have a Writ of Inquiry, for that is to be only where a Judgment is by Consent of the Defendant, or for Want of Pleading. But if the Defendant is unwilling, or not prepared to try the Cause the first Day of the Assizes, upon a Petition and Affidavit of the Reasons exhibited to the Judge, he will stay it till another Day the same Assizes.

The Plaintiff to proceed after Defendant hath pleaded.

Trial stayed.

If a Juror be withdrawn, the Defendant cannot carry the Cause down by *Proviso*, because the Cause stays by Consent; for no Juror can be withdrawn without Consent of both Sides. Where you move for a new Trial, on the Jury's Finding against the Judge's Direction, you must produce the Judge's Certificate of their so finding in Court. Motion for a new Trial because excessive Damages were given in Assault and Battery; Ordered to shew Cause why, on bringing in the Money and paying full Costs, it should not be granted. And upon Suggestion of an Agreement, a new Trial was granted upon bringing the Money into Court within 12 Days, and to pay full Costs, or else the Plaintiff to take his Judgment.

New Trial.

Vide 2 Salk. 647, 649, 663. Cumb. 357, 442 acc. Sed ibid. 17, 170 cont.

No new Trial shall be granted without Costs being paid of the first Trial. And upon

Costs.

on

Nonsuit.

on a Nonsuit in the Courts at *Westminster*, Oath being made of the Costs taxed and demanded, the Court will not permit the Plaintiff to proceed in the same Cause, till he hath paid the Defendant Costs of the Nonsuit.

Rules to sign Judgment.

In all Real Actions, after your Common Rule to plead is out, before you can have Judgment, you must move for a peremptory Rule: Also in Real Actions you cannot sign Judgment without a Special Rule of Court. As to the *Postea's* upon Record after Verdicts, your Record is returned by the Clerk of the *Postea's*, and from thence you are to carry it to the Prothonotary to tax Costs, who gives the *Postea* to the Clerk of the Judgments, and he takes Care of continuing the same on the Rolls: After Judgment entered, Execution is awarded, &c.

*Inst. Leg. 242.
Rolls.*

In making up your Roll for Judgments, leave a Margin of an Inch, and begin your first Line about a Span from the Top; then enter your Declaration, thus:

South'ton, ff. A. B. late of, &c. in the County aforesaid, Gentleman was summoned to answer to C. D. of a Plea, &c. (to the End of the Declaration) and thereof he brings his Suit, &c. And so enter the rest of your Pleadings and Issue, beginning a new Line at each Plea, &c.

Of these Judgments the Attornies enter only such as are had without Trial, viz. by *Nil dicit*, *Cogn. Action.* or *Non sum Informatus*, which are entered after the Declaration, beginning a new Line, as directed in *B. R.*

When you bring in your Rolls in this Court, you are to docket your Judgments and

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and Entries on the Docket of that Term wherein they are entered, after this Manner :

I am not Inform'd in Debt.

*South'ton, ff. 7. Selby for Baker. } Roll 150.
T. Brooks for Williams.*

And upon any Occasion you may soon find out a Judgment by searching these Dockets, if you know the Attorney's Name: Or you may readily find it, if you search with the Clerk of the Essoins, who keeps an Alphabetical Table of the Names of the Defendants.

The Writs in this Court on Judgment and Execution, are, *Capias ad Satisfaciendum*, *Fieri facias*, *Elegit*, *Habere facias Possessionem*, *Scire facias*, &c. *Writs of Execution.*

A *Capias ad Satisfaciendum* is a Writ founded on the Statute, and lies after Judgment, where a Man hath recovered in a Personal Action, as Debt, Damages, &c. And he against whom the Recovery is obtained has no Lands or Tenements, or Goods sufficient, whereof the Debt may be levied: Then shall the Person recovering have a *Ca. sa.* commanding the Sheriff to take his Body, and he shall be imprisoned until Satisfaction be made. And if the Sheriff, &c. let him go at Liberty before the Debt is satisfied, the Creditor may have either Action of Debt, or on the Case against the Sheriff, and recover the Debt due. *A Ca. Sa. Inst. Leg. 248.*

George, &c. To the Sheriff of S. Greeting: *Inst. Leg. 249.*
We Command thee, That thou take A. B. late *A Writ Ca.*
of *Sa. in Case.*

The Praittling Attorney :

of, &c. in thy County, Teoman, if he may be found in thy Bailiwick, and keep him safely, so that thou may'st have his Body before our Justices at Westminster, such a Day, (i. e. the Return) To satisfy to C. D. of 20 l. which to the same C. D. in the same our Court before our Justices at Westminster, were adjudg'd for his Damages which he hath sustained, by Occasion of a certain Trespass on the Case done and perpetrated to the same C. by the foresaid A. at H. in thy County, whereof the said A. is convicted, and have thou (then) there this Writ. Witness, &c.

If in Debt, To satisfy, &c. Which the same C. D. in our Court before our Justices, &c. hath recovered against him, &c.

On Nonsuit in Debt say, By Discretion of the same our Justices, according to the Form of the Statute, &c. were adjudged for his Costs and Charges which he hath sustained for, (by) the same, (for) that that the foresaid A. B. hath not prosecuted his Writ brought by the same A. in a certain Plea of Debt, &c. against the foresaid C. in our foresaid Court, before, &c. whereof the said A. is convicted, &c.

Nonsuit at the Assizes, Which he hath sustained by the false Clamor of the foresaid C. in a certain Plea of Debt, &c. prosecuted in our foresaid Court by the same C. against the foresaid A. whereof he is convicted, &c.

Upon a Judgment against an Executor or Administrator, a Ca. Sa. ought not to issue out, but a Fi. Fa. de bonis Testatoris, except a Devastavit be returned.

A Fi. Fa.

The Writ Fieri Facias, is a Judicial Writ, founded on the Statute of Westm. 2. cap. 18.

or

or rather on the Common Law, and lies for him who has recovered Debt or Damages, commanding the Sheriff to levy the same of the Defendant's Goods; and must be brought within a Year and Day after the Recovery had. Before the Statute 29 Car. 2. cap. 2. Goods were liable to the Execution from the *Teste* of the *Fieri Facias*; but by that Statute no *Fieri Facias*, or other Execution, shall bind the Property of the Goods but from the Time the Writ is delivered to the Sheriff, &c. And the Goods of a Stranger, in the Defendant's Possession, are not to be taken on a *Fieri Facias*.

George, &c. To the Sheriff, &c. We Com- *A Fi. Fa. sur*
mand thee that of the Goods and Chattels of A. B. *Promiss. non*
late, &c. within thy Bailiwick, thou cause to *Performat.*
make 10l. which in our Court before our Justices
at Westminster, were adjudg'd to C. D. for
his Damages, which he had by Occasion of cer-
tain Promises and Undertakings made to the
same C. by the foresaid A. at, &c. within thy
County not performed. And have that Money
before our Justices at Westminster in, (on)
the Morrow of Holy Trinity to render to the
foresaid C. of the Damages aforesaid, whereof
he (the foresaid A.) is convicted, and have
thou (then) there this Writ. Witness, &c.

In Debt, That of the Goods and Chattels of,
&c. Thou cause to be made as well a certain
Debt of 20l. which C. D. in our Court, &c.
hath recovered against him as 20s. which to the
same C. in the same our Court were adjudged for
his Damages, which he had by Occasion of the
detaining of that Debt, and have thou there those
Monies,

Monies, &c. (the Return Day) to render to the foresaid C. of the Debt and Damages aforesaid, whereof he is convicted; and have (then) there, &c.

In Trespass, say, *Adjudged for his Damages which he hath sustained by Occasion of a certain Trespass to the same C. by the foresaid A. done with Force and Arms, and against our Peace at, &c. within thy County, and that Money have there, &c. of the Damages, &c.*

After you have Judgment by Default or Confession against an *Executor or Administrator*, you can have no *Fieri Facias de bonis propriis*, nor Execution of his Body, till you have had a *Fieri Facias de bonis Testatoris*, returned *Nulla bona*; after which there must go out a Writ of *Scire facias & inquir.* to find if any Assets be come to the Defendant's Hands: And if Assets be found, the Sheriff must return a *Devastavit* according to their Value, which *Devastavit* being traversed by the Defendant, is to be tried by the Jury; and then Execution shall go out against the Defendant *de bonis propriis*.

But the tedious Way of Inquisition may be avoided by bringing an Action in the *Debet and Detinet* against an Executor, suggesting a *Devastavit* in the Declaration, without any Return of the Sheriff, or Finding of a Jury.

If a Sheriff refuse to pay, Money levied on a *Fieri Facias* the Party recovering shall have a *Fieri Facias*, or an *Elegit*, against such Sheriff *de bonis propriis*. And if you levy only Part of a Debt on a *Pi. Fa.* you may afterwards have a *Ca. Sa.* for the Residue.

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An *Elegit* is a Writ by Virtue of the Statute of *Westm. 2.* and lieth where a Man hath recovered Debt or Damages against one not able by his Goods to satisfy it, requiring the Sheriff to take in Execution, and make Delivery to the Plaintiff of a Moiety of the Party's Lands and Tenements; and all his Goods and Chattels, Beasts of the Plough excepted.

An *Elegit*.

George, &c. To the Sheriff of S. Greeting, *A Writ of*
Whereas A. B. lately in our Court before our Justices at Westminster, by Consideration of Debt.
the same Court had recovered against C. D. late Inst. Leg. 257.
of, &c. as well a certain Debt of 100 l. as 100 s. which to the same A. were adjudged in the same our Court for his Damages, which he had by Occasion of the Detention of that Debt by him C. whereof he is convicted. The same A. afterwards came into the same our Court, and by (force of) the Statute thereof provided, did elect to be delivered to him all the Goods and Chattels of the foresaid C. except Oxen and Beasts, (Heifers) of his Cart, (Plough) and in like manner, a Moiety of all his Lands and Tenements within thy Bailiwick. To hold the foresaid Goods and Chattels as his own proper Goods and Chattels; and also to hold the said Moiety of the Lands and Tenements aforesaid, as his own Freehold, to him and his Assigns, according to the Form of the Statute aforesaid, until he shall have levied thereof the Debt and Damages aforesaid; And therefore we Command thee, that all the Goods and Chattels of the foresaid C. (Except Oxen, and the Cattle of his Plough) And likewise a Moiety of all his Lands and Tenements

The Praetising Attorney :

Tenements in thy Bailiwick, whereof the same C. on the Morrow of Holy Trinity, in the 4th Year of our Reign, on which Day the Judgment thereof was rendered, or at any time after was seized, to the foresaid A. without Delay, thou cause to be delivered by a reasonable Price and Extent; To hold to him A. the Goods and Chattels aforesaid, as his own proper Goods and Chattels; And also to hold the Moiety aforesaid, as his Freehold, to him and his Assigns, according to the Form of the Statute aforesaid, until the Debt and Damages aforesaid be shall thereof have levied. And how this our Precept thou shalt have executed, make certainly known to our Justices at Westminster, from the Day of, &c. under thy Seal, and the Seals of those by whose Oath thou shalt have made that Extent and Appraisement: And have (then) there, &c.

If upon an *Elegit* there be no Execution but of Goods, because there is no Lands, and the Goods are insufficient, a *Capias* may issue; for the *Elegit* in such Case is in Effect but a *Fieri Facias*, though the Word be *Elegit*: But if there be Land, and it is extended, it is otherwise. If a Judgment be had against one, who thereupon sells his Land; in whose Hands soever the Land is, it shall be liable to that Judgment.

Where a Sheriff on an *Elegit* returns that the Defendant hath no Lands in the same County, upon *Testatum* he shall have an *Elegit* into another County. And several *Elegits* may issue into several Counties where the Lands lie. Also an *Elegit* may be after an *Elegit*, viz.

*Elegit after
an Elegit.*

Foley.

Foley. Essex, ff. Whereas J. H. lately in our Court before our Justices at Westminster, by the Consideration of the same Court had recovered against M. W. late of London, Widow, otherwise called M. W. &c. as well a certain Debt of 400 l. as 80 s. which, &c. whereof she is convicted, the said J. afterwards came into our said Court, and by the Statute, &c. chose to be delivered to him all the Goods and Chattels of the said M. besides Oxen and Heifers of her Plough; and likewise the Moiety of all her Lands and Tenements, of which the said M. in the Morrow of Holy Trinity last past, upon which Day the Judgment aforesaid was given against her, or at any time afterwards, was seized, he should without Delay cause to be delivered to the same J. by a reasonable Price and Extent, to hold to him the Goods and Chattels aforesaid, as his proper Goods and Chattels; And also to hold to him the Moiety aforesaid, as his Free Tenement to him and his Assigns, according to the Form of the Statute aforesaid, until the Debt and Damages should be levied thereof; and how he had executed the said Writ, he should make appear to our Justices here at Westminster in the Morrow of the Purification last past. And thou at that Day did'st Return to our Justices at Westminster, a certain Inquisition taken before thee at L. in this County the 12th Day of December last past by the Oath of 12, &c. by which it is found that the said M. on the said Morrow of the Purification last, and after that Day was seized in her Demesnes of Freehold as Tenant for Term of Life, of and in the Manors and chief Messuages of L. and D. with all their Rights, Members and Appurtenances of, &c. And

Entry of an
Elegit after an
Elegit.

Y

further

further, that the said M. at the said Day of the Judgment aforesaid given, or at any Time afterwards, had not any other Goods or Chattels or any other or more Manors, Lands or Tenements in thy County, which, to the Knowledge of the Jurors of the Inquisition aforesaid, could be extended or appraised, and further returned to our Justices at the same Day, that none came to thee on the Behalf of the said J. to pray Deliverance to be made to him of the Moiety of the Manors and Tenements aforesaid by the Inquisition aforesaid found, so that thou could'st not proceed to a further Execution of the said Writ; whereupon the same J. came into our said Court, saying, that the same M. at the Time of the Judgment aforesaid given, and afterwards had diverse Lands and Tenements in thy County to the Value of 40*l*. Besides the Manors and Tenements in the Inquisition aforesaid specified; and also was possess'd of diverse Goods and Chattels to the Value of 100*l*. which thou could'st have extended and appraised, and delivered to the same J. And therefore we Command thee as oftentimes we have commanded thee, That all the Goods and Chattels of the same M. besides Oxen, &c. and likewise the Moiety, &c. besides the said Manors and Tenements in the Inquisition aforesaid specified, of which the same M. at the Time of the Judgment aforesaid given, or at any Time afterwards was seized and possessed of; And also the Moiety of the Manors and Tenements in the Inquisition aforesaid specified, thou cause to be delivered to the said J. by a reasonable Price and Extent, to hold at his Free Tenement to him and his Assigns, according to the Form of the Statute, &c. until

his said Debt and Damages be thereof lewyed,
and how thou shalt have executed this our Com-
mand, Precept, Cause thou to appear certainly,
&c.

The Writ *Habere Facias Possessionem*, cause *Hab. fac. Pos-*
to have Possession, lies after a Recovery in *self*.
Ejectione firma, or *Quare ejecit infra Term. n.*
commanding the Sheriff to put the Plaintiff
in actual Possession of his Farm or Term.
And the Sheriff in executing this Writ, as
well as the Writ *Habere facias Seisinam*, may
break open the House to deliver Possession or
Seisin to the Plaintiff: But this may not be
done on a *Ca. Sa. Fi. Fa. &c.* unless the King
be Party, nor even then if the Writs may be
otherwise executed.

George, &c. To the Sheriff of S. Greeting, *A Writ of*
Whereas A. B. had lately in our Court before Hab. fac. Pos-
our Justices, &c. by Judgment of the same *self*.
Court, recovered his Term as yet to come, of and
in one Messuage, &c. with the Appurtenances
in, &c. in thy County against C. D. late of,
&c. in thy County, Gentleman, which E. F.
Esq; such a Day in the Tear of, &c. aforesaid
had demised to the foresaid A. to have and to
occupy the Tenements aforesaid, with the Ap-
purtenances, to him and his Assigns from the
Day of, &c. then last past, until the full End
and Term of seven Years, from thence next fol-
lowing, and fully to be compleat and ended,
which is not yet past, and whereof the foresaid
C. removed and expelled the same A. from his
Possession thereof, and ejected the same A.
from his Farm aforesaid: Therefore we Com-
mand

mand thee, that thou Cause without Delay the
foresaid A. to have his Possession of his Term
aforesaid, as yet to come, of and in the Tene-
ments aforesaid, with their Appurtenances;
And how thou shalt have executed this our Pre-
cept make certainly appear to our Justices at
Westminster, from the Day of, &c. And have
then there, &c.

If you add a *Fieri Facias* for Costs, after
the Return of the Writ, say. — *We also*
Command thee, That of the Lands and Chattels
of the foresaid C. in thy Bailiwick, thou cause
to be made 10l. &c. which to the same A. in
our said Court were adjudg'd for his Damages,
which he had by Occasion of the Trespass and
Ejection aforesaid; and have that Money then
there, &c. and (have) also this Writ, &c.

Sci. fac.

As to the Writ *Scire facias*, having parti-
cularly treated of it in the Practice of B. R.
I have only to observe in this Place, that if
Judgment be against a Testator, there must
issue a *Scire Facias* against his Executor or
Administrator, though within the Year:
And if one recover against a *Feme Sole* and
she becomes a *Covert* within the Year and
Day, a *Scire Facias* is to issue against the
Husband.

If a Judgment be above a Year and a Day
old, you may proceed either by Action, or
Sci. Fac. and in the Former you will recover
Costs. Some Writers say, the Defendant
may have a *Scire fac.* against the Plaintiff
to make him acknowledge Satisfaction upon
a Judgment when Money is paid, suggesting
the Payment in the Body of the Writ. Where
the

the Defendant dies between Verdict and Judgment, the Plaintiff will lose his Judgment, if he sign it not in two Terms.

Besides *Sci. fac.* there is another Way of prosecuting *Bail*, which is by Original at Common Law, for the Sum for which they became Bail; and thereupon arrest them upon *Capias*, *Alias* and *Pluries*, or sue them to Exigent, and declare upon the Recognizance, using all Proceedings thereon, as in Action of Debt.

And this Action is to be laid in the County of *Middlesex*, where the Records lie, &c.

Of Writs of Error, Habeas Corpus's, and Certiorari's, in C. B.

AS for *Writs of Error* for removing Causes Error. after Judgment, if Errors are allowed, the Judgment is made void, and the Defendant is to have Restitution: If they are not allowed, then is the former Judgment confirmed. But tho' Judgment be reversed, yet is not the Plaintiff's Cause of Action taken away; for he may bring a new Action for the same Cause if he will; though this must be done within a Year after the Reversal.

How to commence, prosecute and determine a Suit in Error, *vide* the Head Writ of Error in B. R.

Causes are removed into C. B. out of inferior Courts either by a *Pone*, *Tolt*, *Accedas* Causes removed.
ad Cur. Recordare, Writ of Error, or a Writ of

of false Judgment. But the most usual Way of removing Causes hither before Judgment is by *Certiorari* or *Habeas Corpus*. And where the Body is not in Prison by Supposition of Law, a *Habeas Corpus* is not proper to remove the Cause, but a *Certiorari*.

Hab. Corp.
Bail to be put
in, &c.

Where a Cause is removed by *Habeas Corpus* out of an inferior Court, at the Return of the Writ the Plaintiff must give Rule for the Defendant to put in special Bail within 4 Days after Notice, which being neglected by the Defendant, and he having been served with the Rule, a *Procedendo* shall issue, on Certificate from the Judges that no Bail has been put in. In Case Bail be put in, the Plaintiff hath 20 Days to except against it, and is to have Notice of it; and if he makes no Exception before the twenty Days end, it stands absolute; so that the Plaintiff must file his Original, and declare within two Terms after the Bail put in, or else the Bail is not liable. Where Exception is taken to the Bail, the Plaintiff must have a Rule signed by the Judge who took the Bail, that unless better Bail be put in by a Day, the Plaintiff shall have a *Procedendo*; which Rule is to be served on the Defendant's Attorney.

Recordaries
Pone's, &
Accedas.

Causes out of inferior Courts not of Record, before Judgment, are removed by these three Writs, made by the Curfitor, viz. a *Recordare*, to remove a Plaint out of the County-Court; a *Pone*, to remove a Cause which is there by *Justices*; and an *Accedas*, to remove a Plaint out of the Hundred-Court; The *Recordare* and *Accedas*, in all Actions but Replevin, are to be filed by the Prothonotary;

notary; and in Replevin with the *Filizer*, when the Plaintiff brings the Writ: But in Replevin he must examine if the Defendant hath appeared; if not, he must sue out a *Posse* from the *Filizer*, and with the Sheriff return Issues: You have then a *Distringas*, *Alias* & *Pluries distring. ad infinit.* till he doth appear, and after his Appearance, you declare and proceed as in Causes upon Arrest. If the Defendant brings the Writ in any other Action but Replevin, he must file it, and enter his Appearance with the Prothonotary with all possible Speed to prevent a *Procedendo*: After the Writ is filed and Appearance entered, you give Rule with the *Filizer* for the Plaintiff to declare, which if he refuseth when the Rule is out you enter a *Non Prof.* If he declares, you proceed *ut supra*.

To remove a Cause, *after Judgment*, out of an inferior Court, if of Record, is by Writ of Error as aforesaid; but if the Court be not of Record, you must bring a *Writ of false Judgment*, and when returned, file the same with the Prothonotary; it is to be also entered with the Errors assigned on a Roll: Then a Copy of it is to be delivered to the Attorney on the other Side, who is to appear thereto; and he that had the Judgment below, but is the Defendant in this Writ, must get a Serjeant to move on the Record, maintaining the Judgment against the Errors assigned, and praying a Writ *de Executione Judicii*: But if this be granted, and the Judgment affirmed, yet he recovers no Costs; nor doth the Plaintiff in the Writ recover any Costs, tho' he reverseth the Judgment.

Writ of false Judgment and Proceedings thereon.

*A Hap. Corp.
cum causa ad
fac. & rec.
Return imme-
diate.*

George, &c. *To the Mayor, &c. We Com-
mand you, That immediately after the Receipt
of this Writ, you have before our Justices at
Westminster the Body of A. B. detained in our
Prison under your Custody, as 'tis said, by what-
soever Name he may be charged in the same, to-
gether with the Day and Cause of the taking
and detaining of the same A. B. to do and to
receive whatsoever our said Court shall consider
of him in this Part, and have you there this
Writ. Witness, &c.*

*A Habeas Corpus ad Satisfaciend. (to satisfy)
against a Man in the Fleet, delivered to the
Warden of the Fleet, is sufficient to charge
him in Execution. If the Defendant be
minded to go to the Fleet, there needs no
Bail; and if he be not actually in Prison, you
must get the Officer to return a Capi, or get
some other Officer to take him into Custody,
and make Certificate thereof, or carry him
to Prison.*

*If the Plaintiff do not declare within the
Time appointed by the Orders of the Court,
the Prisoner may be discharged by Superse-
deas.*

*A Superseas
(quia improvie-
do) on a Hab.
Corp.*

George, &c. *To the Sheriff of S. Greeting:
Whereas we had lately commanded thee by our
Writ, That thou shouldst have A. B. being de-
tained in our Prison under thy Custody, together
with the Day and Cause of the taking and de-
taining of the same A. before our Justices at
Westminster on Wednesday, &c. to do and re-
ceive what our said Court should in that Part
consider; yet because it is very certain to our
fore said*

foresaid Justices at Westminster aforesaid, That the foresaid Writ of Habeas Corpus, did issue improvidently: Therefore we Command thee that from molesting the foresaid A. by reason of the Premises, or (from) returning the foresaid Writ before our Justices at Westminster, or (from) executing the said Writ in any Manner, thou do'st altogether surcease. Witness, &c.

For Forms of *Procedendo's* on a *Habeas Corpus* *Procedendo. cum causa*, see Lilly's Entries 628, 629. Clift's Entries 371, 373, 374. See also *The English Lawyer* lately published. Pag. 322, 323, &c.

Of Proceedings against Attornies, and Attachments in C. B.

THE Course of Proceedings for and against Clerks and Attornies of B. R. *Attachment Privilege.* ante, will serve, *mutatis mutandis*, for this Court. The usual Course where an Attorney or Clerk of Court is Plaintiff, is to sue out an *Attachment of Privilege*: And an Attorney may chuse whether he will sue or be sued out of the County of *Middlesex*, because his Attendance is always supposed to be there.

If an Attorney sue in this Court for his Fees, &c. and lay his Action in *Middlesex*, the Court will not alter the *Venue*, although the Cause he was retained in were in another County. The Statute of Limitations cannot be pleaded to an Attorney's Bill; but it may to *What Privileges Attornies have beyond others.*

to a Solicitor's. If an Attorney be Defendant, he ought not to give in any Bail, (being supposed present always in Court) if he gives in Bail, he waves his Privilege. But, by the Custom of the Court, special Bail is to be given on an Attachment at the Suit of an Attorney Plaintiff, though the Debt be but 40 s. Yet if the Attorney delivers a Declaration before Bail is put in, he thereby waives his Privilege of insisting on special Bail.

How to prosecute Attornies.

After a Bill is filed against an Attorney, he is to be called in Court, and thereupon a Rule must be given to plead; and if he will not appear upon Rule, he shall be fore-judged. If you arrest him before he is fore-judged, he may discharge himself by *Superfedeas*. An Attorney using any Trade, shall be obliged either to leave off his Trade, or be put out of the Roll. And in this Case, a *Capias* has been granted before the Attorney has been fore-judged. If any Attorney would save an Arrest upon Process of any of the Courts at *Westminster* by his Privilege, he must deliver his Writ of Privilege to the Sheriff, and allow it with him; otherwise if the Attorney be arrested, without Allowance of the said Writ, the Sheriff will not discharge him upon his Writ of Privilege, but he must then plead his Privilege for his Discharge *sub pede Sigilli*: But if the Process issue out of an inferior Court, such Writ is a Discharge altho' it be not allowed.

An Attachment of Privilege for an Attorney of the Common Pleas, runs thus:

George,

George, &c. to the Sheriff, &c. *Attach.* Attachment of
A. B. C. D. &c. so that thou may'st have them *Privilege.*
before our Justices at Westminster, such a Day,
&c. to answer to E. F. Gentleman, an Attorney
of the Court of our Bench, according to the Li-
berties and Privileges of the same Court for such
Attornies and other Ministers of the same Bench
used and approved, from the Time wherein the
Memory of Man doth not exist, (or from Time
beyond the Memory of Man) in the same, of a
Plea, &c. to, and have then there this Writ.

A Declaration by an Attorney of C. B. is as
follows :

A. B. late of, &c. was attached by Writ of
the Lord the King of Privilege, &c. issuing out
of this Court, to answer to E. F. Gentleman,
an Attorney of the Court of the Lord the King of
the Common Bench here, according to the Liber-
ties and Privileges of the aforesaid Bench, (used
and approved in the same from time beyond the
Memory of Man) of a Plea of Trespass upon the
Case, &c. and whereof the same E. in his Pro-
per Person Complains, &c.

If by a Prothonotary's Clerk, say, To an-
swer to E. F. Gentleman, one of the Clerks of
George Cook, Knt. Chief Prothonotary of the
Lord the King of the Bench of a Plea, &c.

A Narr. upon a Bill filed in C. B. against *Narr. for*
an Attorney, is thus : *an Attorney.*

Michael-

Michaelmas 4th of King George the Second.
Roll the 10th.

*Against an
Attorney.*

Foley, ff. *It is to be remembred, That such a Day, &c. in this same Term A. B. by, &c. came here into Court, and exhibited to the Justices of the Lord the King here his certain Bill against E. F. Gentleman, an Attorney of the Court of the Lord the King here, being present here in Court in his proper Person of a Plea of Debt (or, as the Case is) the Tenor of which said Bill follows in these Words, viz. To the Justices of the Lord the King of the Bench, A. B. by, &c. his Attorney Complains of E. F. an Attorney of the Court of the Lord the King of the Bench, otherwise called E. F. &c. present here in Court in his proper Person of that, That, &c. (as in other Declarations of Debt.) And bath Damage to the Value of 20l. and thereof he prays Remedy, &c.*

And if it be on a Bond or Deed, conclude with a Profert in Curia thus: And he brings here into Court the foresaid Writing Obligatory, (or the foresaid Deed) testifying the foresaid Debt, in the Form aforesaid, &c.

An Attachment against an Attorney for Contempt, is thus:

*Attachments
for Contempt.*

George, &c. *Attach E. F. an Attorney of the Court of our Bench, so that thou mayst have him before our Justices at Westminster, (such a Day) to answer to us of and upon (concerning) those things, which to him on our Part shall be then objected; and have thou then there this Writ. Witness, &c.*

If a Defendant is taken on *Attachment* for *Contempt*, as for not paying Costs, &c. he is to give Bail-Bond to the Sheriff, and at the Return of the Writ appear personally in Court, where he enters into a Recognizance to appear there *de Die in Diem*, 'till the Court shall otherwise determine: Then upon Motion the Court orders, that his Adversary shall exhibit Interrogatories against him, within four Days after Notice, or he shall be discharged. The Interrogatories must be filed with the Secondary of that Office it is in, and by him the Defendant is to be examined, being first sworn before a Judge: After his Examination, the Prosecutor takes Copies of his Depositions, and if he finds his Charge denied, he brings up his Witnesses to prove the Contempt *viva voce* in Court; where the Defendant appears to confront them, and answer the Questions of the Court, (all the Time kneeling) and if the Court judge him guilty of the Contempt, they send him to the Fleet, otherwise they discharge him. On his neglecting to appear, the Court will order his Recognizance to be estreated.

These Attachments are never granted, but on Affidavit and Motion: Nor are they to be granted until a *Nisi Causa* Rule be served. After Costs are demanded, an Attachment for them may be made, but the Prothonotary will not sign it unless you bring a Rule for it; which the Secondary will make out of Course, upon Sight of the Rule whereon the Costs are taxed, and Affidavit that (after an *Hab. Corp.*) they were demanded.

If

If a *Feme Covert* be taken on an Attachment for Contempt, she must answer in Custody, if her Husband will not appear for her.

Of Originals and Outlawries prosecuted in C. B.

*Originals to
warrant
Judgments.*

IN my Account of the Practice of the Court of *King's Bench*, and also of this Court, I have already given the whole Proceedings on Original, to the Trial and Determination; so that what I shall observe in this Place, is only relating to *Judgments*: And your *New Original* to warrant Judgment comes in soon enough, so it be return'd any Time before Judgment sign'd.

It is best to have it of the same Term, if your Impar lance be not entred: And the Curfitor will make your Original returnable the first, or any other Return of the Term before that wherein you bespeak it, provided you bring your Note on or before the 7th Day of the subsequent Term; but he cannot go further than the preceding Term, without Warrant from the Master of the Rolls; which may be obtained upon Petition, and Affidavit made of mislaying your Instructions, or other reasonable Excuse, for which Warrant you pay 5s. 6d. And you are to take Notice, that when the Defendant's Appearance is by Compulsion and Process of Law, there must be an Original sued by the Plaintiff; but where a Judgment and a Release of Errors is given by the Defendant, no Original is necessary to warrant the Judgment. If

If the Defendant pleads the Statute of Limitations, your having sued him within 6 Years to an Outlawry on a *Clausum fregit*, or *Capias*, will not set aside his Plea; for a *Clausum fregit* is no Original to your Action, but your Original ought to be *Special*, such as agrees with the Declaration; so that in this Case, it is best to file a new Original at the Time you begin your Process to Outlawry.

Where you design to sue any Person to the Outlawry, who is not easy to be taken, or hath not sufficient Estate in the County to be summon'd, as you may in Trespass, Account, Case, Debt, &c. you cannot sue by *Acetiam*, but are to make out your *Precipe* if in Debt, Detinue, Case, Account, Covenant or Replevin; or *Pone* if in Trespass, Trover, Ejectment, Assault, and all Actions laid *Vi & Armis*, and even in Debt where 'tis with a *Clausum fregit*, which must be carried to the Curfitor of the County where your Action is laid for an Original. And the Outlawry, unless laid in *London*, will scarce be perfected under three Terms; but in *London* you may sue to the Outlawry three Times in the Year, because the Hustings are oftner kept than the County-Court Days in the Country: And this is the Reason, that in suing to the Outlawry, most Practisers lay the Action in *London*. Also in a Vacation you may take the Benefit of the preceding Term for your Original, as is before directed.

When your Original is gotten, you may return it of course, thus:

Pleg.

Proceedings to Outlawry.

Pleg. de Prof. { J. Doe.
R. Roe.

*Infrano'iat. A. B. nihil habet in Ballia' n'ra
per quod Sum. Potest, or (in Case) At-
tath. potest.*

You then carry it to the Filizer of the County, who thereupon makes out a *Capias* and the other subsequent Writs, all together, if the Original will be ar it ; and after seal'd, you may return your *Capias*, *Alias*, and *Pluries*, severally in the following Manner :

*Infranominat. A. (the Defendant) non est
Invent. in Balli'a n'ra.*

Respons.

F. C. Ar' } *Vic.*
H. P. Ar' }

After you have return'd your Writs of *Capias* and *Alias*, (which may be either carried to the Filizer or kept by you) a Warrant of Attorney is to be made out for the *Pluries*, as follows :

Trin. quarto Geo. 2di. Regis.

London, ff. A. B. po. lo. suo E. E. At-
torn. suum vers. C. D. nuper de, &c.
Gen. de placito Transgr. &c.

This Warrant of Attorney is to be made on a small Piece of Parchment, and carried to the Clerk of the Warrants to be filed ; who will Stamp your *Pluries*. Then you are to carry your *Pluries* to the Exigenter of the

the County where laid, who thereupon will make out an *Exigent and Proclamation*, which *Exigent.* | you must get sealed; and, if in London, you are to carry your *Exigent* to one of the *Compters*, and leave it there to be perfected, but the *Proclamation* you send down to the Sheriff of the County of which the Defendant is named, in order to be executed.

On the Return of your *Proclamation*, you must file it with the *Custos Brevium*, and having got your *Exigent* return'd, you are then to carry it to the Clerk of the Outlawries, and he will make out a *Cap. Utlagat.* (either *General*, against the Body, or *Special*, against the Body, Lands, and Goods) upon which you proceed to Execution, &c. as in B. R.

The Defendant, if he thinks fit, may *Appearance of* *the Defendant,* *&c.* *Appear* before he is return'd Outlaw'd, without Bail, by superseding the *Exigent*, and paying the Plaintiff's Costs; and after Outlawry return'd and the *Exigent* filed, if the Proceedings were by *Clausum fregit*, he may reverse the Outlawry without Bail, on Payment of Costs, and his own Charge of Reversal: But all Things considered, if a Defendant can be arrested, to proceed by *Arrest* is the best Way. Where the Defendant is well known, lives near the Plaintiff, and is sufficient, and may be arrested; if the Plaintiff outlaw him, he shall be ordered, on Motion, to reverse it at his own Expence. It is the same if you outlaw a Prisoner in the Fleet; because you should bring him to the Bar

Bar by *Hab. Corp. ad Respond.* and charge him there.

Bail.

Where one is outlawed *before Judgment*, on *special Process*, he must upon his Appearance put in Bail to the Value of the Debt and Damages, and not for his Appearance to the Action only. If you have Judgment against one that lurks in several Counties, as you may not have Execution against him in more Counties than one at one Time, it is safest to sue him to Outlawry *after Judgment*, because you may then make out diverse Writs of *Cap. Utlagat.* against him, and for small Charge.

And by suing out a *Ca. Sa.* for the Debt and Costs, and a *Non Inventus* return'd, then an *Exigent* is to be made, and return'd by the Sheriff: Whereupon you may sue out a *Cap. Utlagat.* into as many several Counties as you will; and if the Defendant be taken, he cannot be discharged without Satisfaction to the Plaintiff, or Pardon, or Reversal of the Outlawry.

Of Ejectments and Proceedings thereon in C. B.

Title to Lands.

Ejectments being usually brought to try Titles to Lands, the Plaintiff in this Action makes some Friend of his Defendant, and proceeds according to the Instructions given in B. R.

Rules in Ejectment.

If you would enter a Rule for Judgment by Default, the Affidavit of Service of the Declaration

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Defendan

Declaration may be made either at the Bottom of the *Narr.* or otherwise on Stamp'd Paper by it self: And having made a Motion, you call on the Secondary to draw up your Rule against the casual Ejector, which is afterwards to be carried to the Prothonotary to be signed. The Secondary upon the Motion keeps the Affidavit and *Narr.* (which are to be filed together, to make a good Service,) so that you ought to have another filed up by you, or you must fill up one from that in the Custody of the Secondary.

If the Tenant appears, and enters into a Rule by Consent, it is drawn up thus:

Michaelmas the 4th of King George the 2d.

Somerſet, ff. *It is ordered by the Court by Rule by Consent in Ejectments* of A. B. the Plaintiff's Attorney, and C. D. the Attorney of E. F. who claims the Title in Question, That the same E. F. be admitted Defendant, and that the same A. do immediately appear by his Attorney aforesaid, who is to receive a Declaration and plead there- to the general Issue this Term, and that at the Trial thereupon to be had the same, shall appear in his proper Person, or by his Counsel or At- torney, and confess Lease, Entry, and actual Ouster, Expulsion of so much of the Tenants in the Plaintiff's Declaration specified, as is in Possession of the said Defendant or his Tenant, or of any other Person claiming by or under his Title, or that in Default thereof, Judgment be entred against the De- fendant G. H. the casual Ejector, but that Pro- secution

The Practising Attorney :

secution be stayed against him (thereupon) until he makes Default in any of the Premises. And by Consent of Counsel it is further ordered, that if by reason of Default the Plaintiff shall become Nonsuit on the Trial, the said E. shall take no Advantage thereof, but shall pay to the said Plaintiff his Costs, to be taxed by a Prothonotary for the same, &c.

Appearances.

Upon this Rule, you enter an Appearance with the Filizer of the County ; then you carry it to the Prothonotary to pay for the *Li. Lo. (or Imparlance)* and to the Secondary who keeps your Rule by Consent, and fills up two others, one whereof you affix to the Copy of the Issue, and deliver it to the Defendant's Attorney ; and then you give Notice of Trial, if you think fit.

If the Tenant in Possession give a Warrant of Attorney to appear, he cannot afterwards take Advantage of the not delivering a Declaration.

A Declaration in Ejectment in *C. B.* is in this Form.

Michaelmas the 4th of King George the 2d.

Foley.

*Declarations
in Ejectment.*

Middlesex, ss. A. B. late of London Gentleman, was attached to Answer to C. D. of a Plea, why with Force and Arms he entred, into one Messuage, one Garden, 10 Acres of Land, 3 Acres of Meadow, &c. with the Appurtenances in E. which F. G. Widow, demised to the same C. D. for a Term which is not yet

I

past,

Dr, Lawyer's Office.

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past, he hath entred, and him the said C. ejected from his Farm aforesaid, and hath done to him other Enormities to the great Damage of him C. and against the Peace of the now Lord the King, &c. And whereupon the same C. by J. H. his Attorney complains, That whereas the foresaid F. G. on the first Day of October, in the 3d Year of the Reign of the Lord the now King at E. aforesaid, had demised to the foresaid C. the Tenements and Premises aforesaid, with the Appurtenances, To have to the same C. and his Assigns, from the Feast of St. Michael then last past to the End and Term of 3 Years from thence next following, and fully to be compleat and ended: By Virtue of which said Demise the same C. entred into the same Premises aforesaid, and was possessed thereof, and being so thereof possessed, the foresaid A. afterwards, to wit, the same 1st Day of October in the 3d Year of the Reign of the said Lord the now King abovesaid, with Force and Arms, &c. into the Tenements aforesaid, with the Appurtenances, (which the foresaid F. G. had demised to the foresaid C. in Form aforesaid, for the Term aforesaid, which is not yet past) entred and ejected him C. from his Farm aforesaid, and other Enormities, &c. to the great Damage, &c. and against the Peace, &c. Whereupon he saith that he is the Worse, and hath Damage to the Value of 10l. and thereof he brings his Suit, &c. And the foresaid A. by Defendant ap- B. L. his Attorney, comes and defends the pears and Force and Injury when, &c. an Imparlance parles, granted until the Octaves of Hillary, &c.

Delivery of
Declarations
in Ejectment.

Declarations in Ejectment must be delivered to the Tenant in Possession, or his Wife; for Delivery to a Servant or Apprentice has been adjudg'd not good, unless the Tenant afterwards acknowledge the Receipt of it. In *Mich. 1697*, a Declaration was left with the Tenant's Apprentice, and held good; but in the Affidavit of Service, the Christian Name and Sir-name must be inserted, and so of Servants, for there may be more than one Servant, &c. but as a Man can have but one Wife, it may be good to her without her Christian Name. But *Mich. 1698*, a Rule was made, That no Delivery should be good, but to the Tenant in Possession or his Wife.

Pleadings,
Judgment,
&c.

When the Declaration is delivered on the first or second Day of *Easter* or *Michaelmas Term*, the Tenant must plead, or the Plaintiff shall have Judgment the same Term. The Course of the Court is to make the Tenant in Possession plead, or else to give Judgment the same Term against the casual Ejector, if in either of these Terms, (by Reason of the Length of them,) altho' the Declaration be after the Effoin-Day, so it be within the first or second Week thereof; and in the Indorsment you must say, the *Beginning* of this present *Easter Term*, &c.

New Trial
in Ejectment.

If the Plaintiff who has the real Title is cast at the first Trial, if he brings it on again, it is best to lay the Demise to the Plaintiff of a prior Date to the Demise of the former Action, if he had then any Title; and declare that the Defendant the same Day *intravit & ejecit*: By this Means, if he reco-

ver, he may afterwards bring an Action for the mesne Profits, and recover from the Day of the Demise, whereby he will reimburse himself what mesne Profits were recovered against him on the former Trial.

On Witnesses not being able to Travel, *Trial put off.* &c. and Motion made by the Defendant to put off Trial to another Term, it has been granted by the Court, the Defendant giving Security for the Mesne Profits.

A Judgment in Ejectment on Confession of the Defendant, with a Remittit Damna, is Entred thus:

And the foresaid Defendant by A. B. his Attorney comes and saith, That he cannot deny the Action of him the Plaintiff, nor that he, (the Defendant) is guilty of the Trespass and Ejectment aforesaid, in Manner and Form as the same Plaintiff hath above against him declared; And doth acknowledge the Declaration aforesaid, to be in all Things expressly True; Therefore it is considered, That the foresaid, (Plaintiff) shall recover against the foresaid (Defendant) his Term of and in the Messuage, Tenements, (Premises and Appurtenances) aforesaid, yet to come, and his Damages aforesaid; and also 40s. for his Costs and Charges by him, about his Suit in this Particular, (apposit) expended: And to the same Plaintiff by this Court here by his Assent adjudged, which said Damages (and Costs) do in the whole amount to, &c. and let the foresaid Defendant be taken; And hereupon the foresaid (Plaintiff) does freely here in Court remit to the said Defendant

See Law of Ejectments. 318.

The Practising Attorney :

fendant the Damages, Costs and Charges aforesaid: Therefore let the foresaid Defendant be acquitted of those Damages, Costs and Charges; And hereupon the same (Plaintiff) prays a Writ of the Lord the King, for making him to have full Possession of the Messuage and Tenements aforesaid, with the Appurtenances. And it is granted to him (accordingly,) &c. returnable before the Justices of the Court here (such a Day) and the same Day is given to the foresaid Plaintiff (to be) there, &c.

But the most usual Form of Entry of a Judgment for the Plaintiff in Ejectment on a Verdict, is thus :

Ibid. 319.

It is therefore considered, That the foresaid (Plaintiff) shall Recover against the foresaid (Defendant) his Term yet to come, of and in the foresaid 20 Acres of Meadow, &c. And his Damages aforesaid, assessed by the Jury aforesaid in the Form aforesaid; And also 5 l. for his Costs and Charges by him about his Suit in this Particular (expended) appointed to the said Plaintiff, (and) by his Assent by the Court here of Increase adjudged; which said Damages, (Costs and Charges) do in the whole amount to, &c. as before.

Or after the Mention of the Term, Lands, &c. You may on the Judgment enter an Award of the Possession, and a Writ of Inquiry of Damages, thus :

Writ of Inquiry of Damages.

Therefore it is commanded to the Sheriff, That without Delay he cause the said (Plaintiff) to have Possession of his Term aforesaid, of and in the Tenements and Appurtenances aforesaid, and how the Writ thereof shall be executed, let him make known (certain) to the Court here (at such

such a Return) and because 'tis unknown to the Court here, what Damages the said (Plaintiff) has sustained by Occasion of the Premisses; Therefore it is also commanded to the same Sheriff, That he diligently Inquire by the Oath of (12) honest and lawful Men of his County, what Damages the foresaid (Plaintiff) hath sustained as well by Occasion of the Premisses, as for his Costs and Charges by him about his Suit in this Particular expended; And that he at the foresaid Day send that Inquisition to the Justices of the Lord the King here, under his Seal, and the Seals of those by whom he shall have made that Inquiry, together with the Writ of the Lord the King to him thereof directed. The same Day is given to the said (Parties) Plaintiff, &c.

Note; Where a Judgment in Ejectment is above a Year's standing, no *Hab. Fac.* Possession is to issue, unless the Judgment be revived by *Sci. Fa.*

See Tit. *Hab. Fac.* and *Scire Fac.* in the English Lawyer.

THE
 OFFICE
 OF THE
 ATTORNEY
 GENERAL
 OF THE
 DISTRICT OF
 COLUMBIA
 WASHINGTON
 D. C.

IN WITNESS WHEREOF
 I have hereunto set my hand
 and the seal of the
 District of Columbia
 at Washington
 D. C. this 1st day of
 January 1901.

JOHN M. HANCOCK
 Attorney General

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THE
PRACTISING ATTORNEY:
OR,
LAWYER'S OFFICE.

PART. III.

*The PROCEEDINGS of Attornies
in COURT-KEEPING, with the
Forms of Grants, Surrenders,
Admittances, Presentments, &c.*

THE next Branch of an Attorney's Practice is that of Court-Keeping, of Courts-Leet and Courts-Baron, wherein most Attornies of any Reputation are more or less concerned, it being likewise a Business of Profit: As this Business is necessary to be treated of in a Work of this Nature, I shall go through the same as concisely as may be with due Variety; and Introductory thereto set forth the

The Practising Attorney:

the *Laws* and *Customs* of the *Court-Leet* and *Court-Baron*, and of Copyhold Estates. But note; by the Opinion of *Holt, Ch. Just.* no Attorney ought to hold a *Court-Leet*, or *Court-Baron*, it being properly the Business of Barristers at Law.

Of Courts-Leet, and Courts-Baron.

Court-Leet
defined.

See *Lex*
Manerior
131, 132.

Lex Maner.
134, 138, &c.

Suit of Court,
Offences pu-
nishable.
Lex Maner.
145, 146.

THE *Court-Leet* is an ancient Court of Record, ordained for punishing small Offences committed against the Crown: It enquires of all Crimes under High Treason, tho' it cannot punish many, but must certify them to the Justices of Assize, by the Stat. 1 Ed. 3. And this Court is called the *View of Frank-Pledge*, because the King is there to be certified by the View of the Steward, how many People are within every Leet, and also have an Account of their good Manners and Government; and every Person of the Age of 12 Years, which hath remained there for a Year and a Day, may be sworn to be faithful to the King, and the People are to be kept in Peace and Obedience.

Every Person from the Age of 12 to 60 Years, that dwells within the Leet, is obliged to do Suit in this Court, unless he be under the Sheriff's Torn: And not only Tenants, but all that are resident within the Leet, if they offend, are punishable in this Court. The particular Articles to be enquired into in the Leet, by Statute, are, if all that owe Suit of Court are present; of Customs and Services withdrawn; Purprestures in Lands, Woods, &c. of Houses set

up,

up, or beat down, and other Annoyances ; of Bounds taken away ; Ways, Waters turn'd or stopp'd ; of Thieves, Hues and Cries not pursu'd, Bloodshed, Escapes, Persons outlawed, Money-Coiners, Treasure found, Affize of Bread and Ale, false Weights and Measures, unlawful Games, Offences relating to the Game ; of Victuallers and Labourers, unlawful Fishing, idle Persons, &c. Stat. 18 Ed. 2. 14 & 15 H. 8. 2 & 3 Ed. 6. &c.

This Court is now commonly claimed by Prescription ; and it is to be kept twice in every Year, one Time within a Month after *Easter*, and the other Time within a Month after *Michaelmas*, at a certain Place within the Precinct. These are the usual Times of holding the *Court-Leet* ; but if it hath been a Custom to keep this Court at any other Time in the Year, it is good, if due Warning be given.

Court-Leet, when held, &c. See Lex Ma- ner. 132.

Of the *Court-Leet*, the Lord or his Steward is Judge : But as to *Courts-Baron*, in some Courts, the Freeholders or Free-Suitors, are Judges.

Vide ibid. 53, 54, 55, &c.

A *Court-Baron* is incident to and inseparable from a Manor : And is called the *Freeholders Court*, when the Actions and Proceedings are for Trial of Debts, Trespases, &c. under 40 s. which is something like a County Court, and the Proceedings much the same. When it is for Trial of Titles to Copyhold Lands, for taking and passing Estates, Surrenders, Admittances, &c. it is called the *Copyholders Court* : And herein the Homagers ought to enquire that their Lords do not lose their Services,

Court-Baron, and its Power.

Ibid. 58, 59.

Services, Customs or Duties, but that the Tenants make their Suits in this Court, in Obedience to their Lords, and present all common and private Nuisances which may prejudice the Lord's Manor.

Ib. 53, 55.

Sorts of Courts Baron.

See Lex Maxima. 53, 55.

Ibid. 53.

When this Court held.

Vide Ibid. 132.

Ibid. 20, 21.

A Manor cannot be without a Court-Baron, and this Court cannot subsist without two Freeholders or Copyholders, as a Court-Leet may; but it may consist of less than 12 Jurymen, which the Court-Leet cannot. And there are two Sorts of Courts-Baron, one at *Common Law*, and is of Freeholders, who are Judges; and the other a *Customary Court*, consisting of Customary Tenants; (for without them it cannot be) and this Court may be holden without Free Suitors, or other Tenants, except Copyholders, and of it the Lord or his Steward is Judge. *1 Inst.* 58.

The Court-Baron must be holden within the Manor; and may be held once in three Weeks, or as often as the Lord or Steward shall think fit: But this is understood of Courts-Baron for trying of Actions; for the other Courts of this Nature are usually held but twice a Year, at the same Time with the Court-Leet; unless it be on Purpose to grant an Estate, and then they are holden as often as is requisite. If no Court hath been held within a Manor Time out of Mind, yet it is not thereby extinct and lost.

Every publick Trespass and Offence must be punished in this Court by Amerciament, on Presenting the same.

Of Presentments, Fines and Amerciaments, in these Courts.

A Presentment is a Denunciation of the Jurors, of an Offence inquirable in the Court, in order to its Punishment: Or it relates to the Estates of Copyhold Tenants, in Cases of Surrenders. Amerciament is a pecuniary Punishment for any Offence committed by the Tenant, impos'd by the Steward, on the Presentment of the Homage; as for the Breach of any By-Law, for Default of Suit of Court, and other Misdemeanors.

Presentment, what. Lex Maner. 141, 142. Ibid. 20, 23.

Amerciament differs from a Fine, in that it is incident unto both Court-Leet and Court-Baron; and Fines are incident to Courts-Leet only: Amerciaments are belonging unto all Manors; but Fines to some few Manors only. All Amerciaments and Fines are to be imposed with Discretion and Moderation, according to the Nature of the Offence committed: And Amerciaments are affected by the Homage; but Fines imposed by the Steward are absolute.

Fines and Amerciaments; ibid. 143, &c.

Offences committed in the Court, or elsewhere, of which the Steward can take sufficient Notice, without the Assistance of the Homage, are punishable by the Steward, and not by the Jurors; and these Punishments thus inflicted are termed *Fines*: But where Offences are committed out of Court, or in any Place, and the Steward can by no Possibility have Cognizance of them; without the Presentment of the Homage, the

Offences amerced; ibid. 20, 21, 121.

the Power of Punishing in such Cases appertaineth to the Jurors of the Leet, and not unto the Steward; and these Punishments are called *Amerciaments*.

These Courts cannot imprison. Lex Maner. 21, 23.

The Court-Leet hath Power to Fine, but not to Imprison: Some Courts may neither Fine nor Imprison, but amerce; as Courts-Baron, County-Courts, &c. they not being Courts of Record; and for Amerciaments in the Court-Baron, the Lord shall not distrain, without Prescription: But for Fines and all other Amerciaments in the Leet, Distress is incident of common Right. Dy. 312.

Ibid. 25, 26.

A Writ of Error lieth upon a Judgment given in a Court-Leet, but not in a Court-Baron: So in a Court-Leet a *Capias* lieth; but in a Court-Baron, instead of a *Capias*, is used an Attachment by Goods.

Of the Power of the Lord and Steward.

Authority of the Lord, as Chancellor, &c. Lex Maner. 155, 156, &c.

THE Authority of the Lord consists chiefly in punishing Offences and Misdemeanours, committed within his Precincts. He may decide Controversies arising about the Title of Copyhold Land, lying within his Bounds; and when he sits in Court as Judge, he is not tied to the strict Form of Common Law, for he is Chancellor in his Court, and may redress Matters in Conscience upon Bill exhibited: If a false Judgment be given in a Court-Baron by the Steward, the Copyholder may sue in the Court of the Lord by Bill,

Bill, to be relieved against such Judgment; and the Lord, as Chancellor, may give Relief therein.

In the Court-Baron an Action lieth for the Lord himself, because the Suitors are Judges; but in a Court-Leet, the Lord cannot maintain any Action for himself, because his Steward is the Judge.

A Lord of a Manor may make Admittances upon voluntary Grants, Admittances upon Surrenders, and upon Discents, in any Place out of the Manor; and may give Licence to Copyholders to alien by Deed: But the Steward cannot do any of these Acts, but by express Words in his Warrant, or by Special Authority given him by the Lord, or by some particular Custom warranting the same. The Lord may retain a Steward by Word, and be good; but to perfect him in his Office, especially to make voluntary Admittances, it is necessary he have a Warrant. *Co. Lit. 61.*

In Admittances, Surrenders, &c. Ibid. 13, 158, 157, 175.

The Steward, in the Lord's Absence, sitteth as Judge in Court, to punish Offences, determine Controversies, and redress Injuries: And a Steward, having Authority in his Patent by express Words, or with the Lord's Consent, may appoint a Deputy; and the Deputy Steward will have equal Power with the head Steward, and the head Steward hath as much Power as the Lord, except in Admittances out of Court. A Steward of a Manor may take Surrenders in any Place, but a Steward of a Court cannot.

Authority of the Steward. Ibid. 178.

If a Grant of a Stewardship be made to one, and for some Fault or Defect in the

Grant to Stewards. Ibid 178, &c.

A a

Grant

Grant it is avoidable; yet Courts kept by him before the Avoidance shall stand in Force; and whatsoever he did as Steward, is ever unavoidable. If a Corporation retain a Steward by Parol, and he keepeth a Court, punisheth Offences, taketh Surrenders, and makes Admittances, these Acts being judicial, shall ever stand, tho' his Authority be grounded on a wrong Foundation; for a Corporation cannot institute any such Officer without Writing.

*Their Acts,
Et. 169, &c.*

Things of Necessity done by one who is but in a reputed Authority, are good, if they come in by Presentment of the Jury; as the Admittance of an Heir upon a Presentment, or Admittance on a Surrender to an Use, &c. But Acts voluntary, as Grants of Copyholds, are not good: If a Lord command a Steward that he shall not grant such Land by Copy, if he grants it, it is void. And if the Steward diminish the ancient Rents and Services, the Grant is void. *Cro. El. 699.*

*Fines.
Ibid. 169, &c.*

A Steward may Fine a Person for Contempt in the Leet; but he cannot commit any Person: Neither can he take Recognizance to bind a Man to the good Behaviour; but he may take a Recognizance for the Peace.

Of Copyholders, and Copyhold Estates.

*Copyholder,
what.
See the Pre-
face to Lex
Maner.*

A Copyholder is a Tenant which holds Lands by Copy of Court-Roll, according to the Custom of the Manor: His Title

Title or Estate is entred in the Roll, and the Steward delivereth him a Copy thereof, from whence he is called a Copyholder. And he is the only Tenant in Law that enjoys Lands by the Copy of any Deed or Record.

A Copyhold Tenant had originally, in Judgment of Law, but an Estate at Will; yet Custom so established his Estate, that by the Custom of the Manor it was descendible, and his Heirs inherited it: The Estate of the Copyholder is not meerly *ad voluntatem Domini*, but *ad voluntatem Domini secundum Consuetudinem Manerii*: So that the Custom of the Manor is the Life of Copyhold Estates; for without a Custom, or if Copyholders break their Custom, they are subject to the Will of the Lord: And as Copyhold is created by Custom, so it is guided by Custom. 4 Rep. 21.

Hath Estate at Will, &c.

Tenant by Copy of Court-Roll hath an Inheritance by the Custom; and when the Custom hath created Estates of Inheritance, and that the Land shall be descendible, then the Law shall direct the Descent, according to the Maxims and Rules of the Common Law: But such Copyhold Inheritance shall not be Assets to charge the Heir; nor shall the Wife be endowed, nor the Husband be Tenant by the Curtesy, without Special Custom. Where there is no Custom to guide Copyhold Estates, they shall be directed by the Rules of the Common Law.

Inheritance by Custom of Manors. Lex Maner. III, &c. 184

A Copyholder doth not derive his Estate out of the Estate or Interest of the Lord only; for then the Copyhold Estate would cease when the Estate of the Lord determined;

Tenants in by Custom.

but the Copyholder is in by Custom, and yet it is looked upon but as a base Estate, and not so worthy as Freehold. 4 Rep. 23.

*Estates-Tail,
Fines and Re-
coveries. Lex
Maner. 108,
&c.*

An Estate-Tail cannot be of Copyhold Lands, unless it be where it hath been used Time out of Mind: But there may be an Estate-Tail by Custom, with the Co-operation of the Stat. W. 2. A Copyhold may be barred by a Recovery, by Special Custom; and a Surrender may bar the Issue by Special Custom: But a Feoffment will not destroy a Copyhold Estate entailed; neither will a Fine or Recovery at Common Law; for Common Law Assurances do not work upon the Assurance of the Copyhold. And yet a Fine may work to the Destruction of an Estate, where it is not preserved by Special Custom: And Copyhold Lands are within the Statute 4 H. 7. of Fines, with Proclamations, and five Years Non-Claim, and shall be barred. 1 Roll. Abr. 506.

*How Copyholds
entailed. Lex
Maner. 74,
75, &c.*

As there may be an Estate-Tail by Custom; so a Copyhold Tenant may have a *Formedon in Descender* in the Lord's Court. Copyholders may entail Copyhold Lands, and bar the Entails and Remainders, by committing a Forfeiture, as making a Lease without License, &c. And then the Lord is to make three Proclamations, and seize the Copyhold, after which the Lands are granted to the Copyholder and his Heirs, &c. where the Custom of the Manor is so, and it will be good. A Purchaser upon a Surrender made to him, may do the same: And these ways of barring entailed Copyholds, are in Nature of a Recovery to dock the Entail.

If a Lord leases a Copyhold Estate for any certain Time, the Copyhold Estate is extinguished, and cannot be afterwards regrant-
 ed by Copy; but if such Lease be made by Tenant for Life, then is the Copyholder during his Life only in Suspence, and his Estate is revived on the Descent to the next Heir. If a Copyholder accept a Lease for Years of the Lord, of the same Land he holds by Copy, the Copyhold is extinguished: But by a Lease of the Manor, the Copyhold is only suspended, and revives again on the Determination of the Lease. 2 Sid. 35. 4 Co. 31.

Copyholds extinguished.
 Ibid. 97.

When an Act of Parliament altereth the Service, Customs, Tenure and Interest of Lands, in Prejudice of the Lord or Tenant, there the general Words of such an Act shall not extend to Copyholds, if a Copyholder binds himself in a Statute, his Copyhold Lands shall not be extended upon the Statute: And if a Judgment be had against a Copyholder for Debt and Damages, Execution may not be had of a Moiety of his Copyhold Lands by *Elegit*; But Copyholds are within all the Statutes of *Bankrupt*, and may be sold by Commissioners as other Lands. Action of Debt doth not lie for Arrears of Copyhold Rents; only Rents of free Land.

Statutes concerning Copyholds.
 Lex Maner. 3, 4, 5.

The Court of Chancery gives Relief to the Copyholder in many Cases; as it will compel the Lord to admit, give Remedy in Case of Forfeiture, unreasonable Customs, &c. See the Fourth Part of this Treatise.

Chancery.

Of

Vide Lex

Maner. 13,
14, 152, &c.

*What Things
grantable.*

Ibid. 61, 152,
157.

*Power of
Grantors of
these Estates.*
Ibid. 155, &c.

Ibid. 61.

*Custom makes
good Disability
of Grantors,
&c.*

Ibid. 352.

Of Grants of Copyhold Estates.

A Manor may be granted by Copy, and generally all Lands and Tenements within the Manor, and whatsoever concerneth Lands and Tenements, may be granted by Copy: A Mill, a Fair appendant to a Manor, Underwoods without the Soil, and the Herbage of Land, may be granted by Copy; but the Waste may not be granted by Copy.

Lords of Manors have large Power in the making of Grants; for in a voluntary Grant made by the Lord himself, it is said the Law neither respecteth the Quality of his Person, nor the Quantity of his Estate; If he be an Infant, or *Non Compos*, an Ideot, outlawed, or excommunicate Person, notwithstanding these are Disabilities at the Common Law, yet he is capable of making a voluntary Grant by Copy, if his Title to the Estate be good and lawful. And it is not material whether the Lord's Estate be Fee-Simple, Fee-Tail, or as Tenant by the Curtesy, for Life, or Years, as Guardian, by Statute, as a Temporary Lord, &c. the least of these Estates is sufficient to the Lord to grant a Copyhold escheated.

The Grants of Copyholds by Infants, Persons *Non Compos Mentis*, Lunaticks, outlawed Persons, &c. are made good by Custom, by reason the Custom of the Manor is the main Foundation, on which is built the Copyhold Estate: The same Per-

sons that are capable of a Grant by the Common Law, are capable of a Grant by Copy, according to the Custom of the Manor; and an Infant, a Man *Non Sane Memoriae*; an Ideot, Outlaw, &c. may be a Grantee of a Copyhold Estate, as well as a Grantor. Tho' it is very rare that you find such Persons either Grantors or Grantees: And it might be unsafe to except of a Grant from a Lord *Non Compos*, &c. if the same were disputed in Equity. *Co. Lit.* 58, &c.

All Grants must be according to the Custom of the Manor, and Rents and Services customary must be reserved; for what Acts of the Lord in granting Copyholds are not confirmed by Custom, but only strengthened by the Power and Interest of the Lord, have no longer Duration than the Lord's Estate continueth. A Grant upon an usurped or unlawful Title, shall never bind the right Owner, but that by Action or Entry he may avoid it: The Law in these Cases, will not support a Custom which tends to the Disinheriting of the Owner.

A Copyholder may not convey his Copyhold to a Stranger without Surrender and Admittance; but he may grant his Estate out of Court to the Lord of the Manor, by Bargain and Sale, or Release; for the Custom in this particular, is not between the Lord and Tenant, but between Tenant and Tenant. *1 Keb.* 808.

Tho' a Man may not grant any Thing to his Wife, they being both one Person in Law; yet a Feme Covert may receive a Copyhold Estate by Surrender from her Husband,

Grants according to Custom.
Lex Maner.
92, 97, 100.

Copyholds conveyed.
Ibid. 62.
W. Jones 42.

Ibid. 65, 71.
Moor 123.

Husband, because she comes not immediately by him, but by the Admittance of the Lord according to the Surrender. A Custom, that a Feme Covert may devise her Copyhold Lands; *Quære* if good.

Lex Maner.]
14, 15, &c.

Of Admittances in Court.

Sorts of.

There are three Sorts of Admittances, viz. upon voluntary Grants, Surrenders and Descents. As in Admittances upon Surrenders, so in Admittances upon Descents, the Lord is used as a meer Instrument, and no manner of Interest passeth out of him; and therefore neither in the one nor the other, is any Respect had unto his Estate in the Manor; for whether he hath it by Right or by Wrong, it is not material: These Admittances shall not be called in Question for the Lord's Title, because they are judicial Acts, which every Lord is enjoined to execute. 4 Co. 27.

Lord's Custom's Instrument.

Admittances void.
Ibid. 16, &c.

In voluntary Admittances, if the Lord admits any one contrary to Custom, either in Reservation of the Rent, or in any other Particular, this shall not bind his Heir or Successor; because Custom hath not sufficiently confirmed it. If a Man surrender with Reservation of Rent, and the Lord admits, not reserving any Rent, or reserving a less Rent than reserved in the Surrender, this Admittance is wholly void. So if I surrender upon Condition, and the Lord omits the Condition, the Admittance is void; for the Admittance must in all Respects agree with

with the Surrender. Admittance by the Lord to a wrong Person is void, and in such Case the Lord must make a second Admittance to the right Person, who will enjoy the Estate.

Upon a Surrender, a Man may not enter upon Lands before Admittance. But the Heir by Descent, where there is no Surrender, is to most Intents a perfect Tenant of the Land immediately upon his Ancestor's Death; for he may enter into the Land before Admittance; take the Profits, punish any Trespass done upon the Ground, surrender to whose Use he pleaseth: And yet the Lord may nevertheless seize the Estate, if the Heir do not come in to be admitted, on Proclamation made in Court: For the Custom of every Manor is compulsory in Point of Admittance, and either upon Pain of Forfeiture of their Copyhold, or of incurring some great Penalty, the Heirs of Copyholders are obliged to come into Court, and be admitted according to the Custom, within a short Time after Notice given of the Death of their Ancestors. 4 Co. 21.

If a Copyholder surrender to the Use of another Person, and after the Lord having Knowledge of it, accepts the Rent of such other, out of Court, this is an Admittance in Law. And any Act implying the Consent of the Lord to the Surrender, shall be adjudged a good Admittance. If the Steward accept a Fine of a Copyholder, it amounts to an Admittance. And the Admittance of Tenant for Life, &c. shall be an Admission of all in Remainder; and there is no Inconvenience

What may be done before Admittance. Lex Maner. 15, &c.

Admittances in Law, Fines on them. Lex Maner. 83, 85.

venience in it, for Fines are to be paid by the Persons in Remainder: If the Fines be certain, the Tenants are to bring them with them to the Court, and pay them before Admittance; and if they are not ready to pay them, it is a Forfeiture; but if the Fine be uncertain, or excessive, it is otherwise.

*Admittance
by Attorney.
Ibid. 16.*

The Lord may refuse to admit any one by Attorney, because the Tenant ought to do Fealty, which he cannot do by Attorney: But if the Lord will admit a Tenant by Attorney, it is good; and Surrenders are oftentimes made by Attorney, in case of Sickness, &c.

*Lex Maner.
175, &c.*

Of Surrenders of Copyhold Lands.

*Copyholds, how
transferred.*

COPYHOLD Lands cannot be transferred from one Tenant to another by any other Assurance than by Surrender: The Intent of these Surrenders is, that the Lord may not be a Stranger to his Tenant; and the Lord must know the Alteration of the Estate, being made to himself.

*By Surrender.
Ibid. 16, 176.*

If a Copyholder will exchange his Copyhold with another, he cannot do it by an ordinary Exchange, but the Parties must surrender to each other's Use, and be admitted accordingly. If a Copyhold Tenant will devise his Copyhold Estate, he may not do it by Will at the Common Law, but he must surrender to the Use of his last Will and Testament, and in his Will declare his Intention touching the Disposition thereof. *Bulst. 200.*

A Stranger may not surrender before Admittance, but an Heir to whom a Copyhold descends may surrender before Admittance, because he is in by Course of Law; for the Custom which declares him Heir to the Estate, casts the Possession upon him from his Ancestors: But a Stranger to whom a Copyhold is surrendered, hath no Estate before Admittance. 'Till Admittance, a Grantor of a Copyhold shall be taken as Tenant, and receive the Profits of the Lands, &c. But the Interest is not in him absolutely, for he cannot pass away the Estate, or make it subject to any other Incumbrance, than it was subject to at the Time of the Surrender: Neither has the Grantee any Interest vested in him 'till he is admitted; and yet the Grantee cannot be defrauded of the Effect of this Surrender; for if the Lord refuse him Admittance, he is compellable in Chancery, and the Grantor is for ever debarred from disposing of the Land to any other Person.

Difference between Heirs and Surrenders.

Ibid. 16, 18.

Grantor Interest 'till Admittance.

Ibid. 15, 185.

By the general Custom, every Copyholder may surrender in Court, and need not alledge any Custom for it; and if out of Court, he surrender to the Lord himself, he need not alledge any Custom in pleading: But where he surrenders out of Court into the Hands of the Lord, by the Hands of two or three Copyholders, or the Bailiff, &c. These Customs being particular, must be pleaded. And if a Surrender be out of Court, there must be Presentment; for in such Case it is not an effectual Surrender; nor is any Thing divested out of him that surrenders,

Surrenders

out of Court.

Ibid. 175.

176, 185.

surrenders, 'till presented in Court. *Co Lit.* 59. 1 *Roll. Abr.* 500.

*Presentment
of such Sur-
renders at
next Court.
Ibid. 175, 176,
180, 181.*

Surrenders out of Court, which may be taken by the Steward, according to the Custom in the Presence of two customary Tenants, are to be presented at the next Court after the Surrender taken; and this is to be done by the same Persons as took the Surrender, in all Points material according to the Surrender: And therefore if the Surrender be conditional, and the Presentment be absolute, both the Surrender and Presentment and Admittance thereupon are void: But if the Steward omit any Part of the Surrender in the Entry on the Roll, the Roll may be amended. If a Man surrender out of Court, and die before Presentment, Presentment after his Death, will be sufficient: And if he to whose Use the Surrender is made, dies before Presentment; upon Presentment after his Death, according to the Custom, his Heir shall be admitted. Upon Proof in Court, that such a Surrender was made, the Lord shall admit accordingly: And the Steward or Tenants refusing to present, may be obliged, upon Petition or Bill to the Lord, or in Chancery.

*Surrenders on
Trust.
To Uses, &c.
Lex Maner.
180 to 184.*

A Copyholder surrenders to the Use of a Man in Trust, that he shall hold the Land until a certain Sum of Money is paid, and afterwards he shall surrender to the Use of another Person: If the Surrendree after the Money is levied, refuses to surrender to the other Person, according to the Trust; a Bill may be exhibited to the Lord to compel him to surrender, and the Lord hath Power to seize

seize and admit the second Person to the Copyhold, as he is Chancellor of his own Court. 1 Leon. 2.

A Copyhold Tenant cannot surrender an Estate to another, and leave a particular Estate in himself. If a Copyholder of Inheritance takes a Lease for Years, this is a Surrender in Law of his Copyhold. *Surrender executed.*

Of Heriots, Reliefs and Services, &c.

A Heriot is a Duty to the Lord, rendered at the Death of a Tenant, or on a Surrender, and Alienation of an Estate; and is according to Custom, the best Beast or Goods found in the Possession of the Tenant deceased. And of Heriots there are two Sorts; Heriot-Service, and Heriot-Custom. Heriot-Service is a Heriot which is never due without special Reservation; and Heriot-Custom, is that Heriot which is never due upon Reservation, but is usually challenged upon some particular Custom. The first Sort of Heriot is seldom reserved upon any less Estate than an Estate of Inheritance; but the later is usually paid upon Estates for Life, or Years, as well as of Inheritance. The Lord may seize for Heriot-Custom. *Heriot, what. Ibid. 113, 116.*
For what Estates due.
Plowd. 96.

A Relief is a certain Sum of Money, which every Freeholder payeth unto his Lord, being of full Age, on the Death of his Ancestor: It is the Key to give the Heir a free Passage. *Reliefs; Ibid. 164. payable by Freeholders.*

Passage to the Possession of his Inheritance. And there is also Relief-Service, and Relief-Custom. Relief-Service is that which is paid upon the Death of any Freeholder; and Relief-Custom is what is paid upon the Death Change, or Alienation of any Freeholder, according to the Custom of the Place. And in many Places it is a Year's Profit of the Lands.

Cro. Eliz.
590.
Lex Maner.
115.
Services ;
ibid. 167.
Homage and
Fealty ;
ibid. 121.

For Reliefs, Heriots-Custom, &c. the Lord may either distrain, or bring an Action of Debt, at his Election.

Service signifieth any Duty whatsoever accruing unto the Lord: And there are several Sorts of Services. Services of Submission, are Homage and Fealty, which are certain Ceremonies used amongst Tenants, whereby they submit themselves to their Lords, and promise to become the Lords Men, for Life, for Member, and terrene Honour, and to owe unto him Faith, for the Lands which they hold of him: These Ceremonies are used at the first Entrance or Admittance of any Tenant, to enforce him to acknowledge himself Tenant to his immediate Lord. But none can do Homage but Tenants in Fee-Simple, or Fee-Tail; but Copyholders, Tenants for Life or Years, are capable of doing Fealty. And none but the Lord himself is capable of receiving Homage; though the Lord's Steward or his Bailiff may receive Fealty of the Tenants. In doing Fealty, the Tenant only sweareth to become the Lord's faithful Tenant.

Annual Ser-
vi. es.

The other Services besides Homage and Fealty, are Services of Profit, and annual and

and accidental Services, as well as corporal Services; And the Lord may distrain the Tenants Cattle or Goods to compel them to perform these Services.

Of Customs of Copyhold Estates.

Custom is a reasonable Act, repeated and continued Time out of Mind. When a reasonable Act once done, is found to be good and beneficial to the People, then do they use it often, and by frequent Multiplication of the Act it becomes a Custom; which being continued without Interruption Time out of Mind, it obtaineth the Force of a Law, to bind such particular Places, Persons and Things which are concerned therein.

Custom defined.

Lex Maner.
61 to 72.

Thus a Custom taketh Beginning, and grows to Perfection; and a good Custom must be grounded on Antiquity, Continuance, Certainty and Reason. *Antiquity*, for that it has been Time out of Memory, or threescore Years, as limited by Statute; and Time out of Mind, is where no Man then living hath heard or known any Proof to the contrary. *Continuance*, it ought to have Continuance, without any Interruption, Time out of Memory; for if it be discontinued within Time of Memory, the Custom is gone. *Certainty*, a Custom must be certain, because an uncertain Thing may not be continued Time out of Mind; and Custom must be *Reasonable*, and not against common Right, or the Laws of the Land.

Requisites to a good Custom.
Godb. 269.
2 Dano. 429.

All

*Customs con-
strued for
publick Good.*

*1 Roll. Abr.
Tit. Custom
E.*

All Customs shall in Construction be taken strictly, and not extend beyond the Words of them; and a Custom never extendeth to a Thing newly created; but what may be claimed by Prescription, may be good by Custom. A Custom contrary to the publick Good, or injurious to a Multitude and beneficial only to some particular Persons, such Custom is repugnant to the Law of Reason, and consequently void. Inhabitants of a Vill, without Custom, may make By-Laws for repairing of Highways, or any Thing for the publick Good; and the greater Part shall bind the rest; but if it be for their own private Profit, for the well ordering of their Common of Pasture, or such like Thing, there without Custom they cannot make such By-Laws. 2 *Saund.* 126. 5 *Rep.* 63.

*Customs un-
reasonable as
to Wood, &c.
8 Co. 63.
Moor 49, 94,
392.
13 Co. 68.
Cro. El. 413,
629.
2 Salk. 368.*

An unreasonable Custom, as for a Lord to exact exorbitant Fines; for a Copyholder for Life to cut down, and sell Timber-Trees, &c. is void. But a Custom that a Copyholder in Fee may sell Timber, is a good Custom. And yet where Custom is for Copyholders of Inheritance to cut Timber for Repairs; neither the Copyholder nor his Lessee can employ Trees felled with the Wind to any such Use, in Regard that thereby his special Property ceaseth. If a Copyholder for Life cuts down Timber-Trees, the Lord may take them, and the Estate is forfeited; but if Under-Lessee for Years of a Copyholder cut down Timber, this shall not be a Forfeiture of the Copyhold Estate; but the Lord is put to his Action of the Case against the

the Lessee. 1 Bulst. 150. 1 Keb. 690. Style 233.

Custom of a Manor is, that every Copyholder at his Death shall pay to the Lord his best Beast for a Heriot: A *Feme Sole* within the Manor, Tenant for Life, takes a Husband and dies; it has been adjudged in this Case, that altho' the Custom was good, yet no Heriot shall be paid, because the Wife had not any Goods or Cattle to pay the same: For her Goods by the Marriage were the Husband's, and he was no Copyhold Tenant within the Custom. 1 Leon. 16. 4 Leon. 239.

Customs as to Heriots.
8 Co. 102.
Cro. El. 590.
725. 824.
2 Leon. 8.

If the Lord of a Manor lets a Copyhold Estate at Will, without Copy for divers Years, this is not any Interruption of the customary Nature of the Land, but that the Lord may grant it again by Copy. Custom of a Manor is, that those who claim Copyholds by Descent, ought to come at the first, second or third Proclamation in Court, and be admitted; or their Estates to be forfeited; if the Heir be beyond the Seas, at the Time of the Proclamations, it will not affect such Heir.

Estates let, Deaths of Tenants.
4 Co. 24, 28;
27.
2 Dano. 194;
86.

If Copyholder for Life surrender to another in Fee, this is no Forfeiture; for it passeth by Surrender to the Lord, and not by Livery: And Copyholds shall not have such Qualities as Estates at the Common Law, without special Custom.

Surrenders.
1 Roll. Ab.
462. H.

Of Escheats and Forfeitures of Copyholds.

Escheat,
what.
Lex Maner.
97, &c.

Escheat is where Lands fall into the Hands of the Lord for want of an Heir to inherit them. But before the Lord can enter upon an Estate escheated, the Homage ought to present it; and Proclamation should be made to give publick Notice, that if any Man come in and make a just Claim, he shall be received; and the Homage finding it clear, intitle the Lord to the Lands escheated.

Escheat of
Felon's E-
states;
ibid. 80, 91.

There is also another Sort of Escheat, which is where any Freeholder committeth Felony, and is attainted, the King shall have Year, Day and Waste, and then it cometh to the Lord by Escheat. But where a Tenant is attainted of High Treason, the King shall have the Escheat of whomsoever he held the Lands.

Copyhold.

Copyhold Land, after Escheating, cannot properly be called Copyhold, except it be because there is a Power in the Lord to grant it as Copyhold.

Forfeiture;
ibid. 97, 100.

Forfeiture signifieth the Transgression of any penal Law or Custom, whereby a Tenant loseth his Lands or Goods. If a Copyholder refuses to do Suit of Court, being sufficiently warned, this is said to be a Forfeiture; unless he be prevented by Sicknes, Inundations of Water, &c. or be so far in Debt, that he is in Danger of being arrested: And

general

general Warning within the Parish (tho' the Tenant be not resident on his Copyhold) is sufficient.

If a Copyholder do not perform the Services due to his Lord; or if he sue a Replevin against the Lord, upon the Lord's lawful Distress for his Rent or Services, these are Forfeitures. If the Lord demandeth his Rent, and the Copyholder being present denies to pay it, this is a Forfeiture; but if the Tenant be not upon the Ground when demanded, nor none by his Appointment, the Lord must continue to make his Demand upon the Ground, so that by a continual Denial in Law it may amount to a Denial in Fact, to make a Forfeiture.

*For not doing
Suit and Ser-
vice, paying
Rent, &c.
ibid. 85, 86,
&c. 96, 97.*

If the Lord upon Admittance of a Copyholder (the Fine by the Custom of the Manor being certain) demandeth his Fine, and the Copyholder denieth to pay it upon Demand; this is a Forfeiture. Upon the Descent of any Copyhold of Inheritance, the Heir by general Custom is tied upon three solemn Proclamations, made at three several Courts; to come in and be admitted to his Copyhold; if he faileth to come in, this Failure worketh a Forfeiture. But if an *Infant* come not to be admitted in Court at 3 Proclamations; or if he will suffer his Houses to run to Ruin, through Negligence only, these are said to be no Forfeitures: Though if he denies to pay the Lord his Rent, or committeth voluntary Waste, these Acts proceeding from Malice and Contempt are Forfeitures. And so if he committeth Felony, or Treason.

*Fines and
Proclamation
of Heirs.
ibid. 83, 84,
111.*

An *Idiot*, *Lunatick*, &c. tho' able to take a Copyhold, yet are they unable to forfeit them: And in other Cases, Forfeitures may be mitigated by Custom; as for Waste, a Copyholder to be amerced, and not incur a Forfeiture.

Leases of Copyholds.
Lex Maner.
92, 128.

The general Custom allows a Copyholder to make a Lease for one Year of his Copyhold Estate, and no more; and he cannot make a Lease for another Year in Reversion, or any other which may continue for more than one Year immediately, and not to commence at a Day to come, without being a Forfeiture. But if a Copyholder make a Lease for one Year, and covenant with the Lessee that after the End of that Year, he shall have the same for another Year, and so *de Anno in Annum* during the Space of seven Years; by this Means the Forfeiture will be saved, because there is no lawful Lease but for one Year only. *Cro. Jac.* 308. 1 *Bulstro* 187, 190. If a Copyholder let for Years, by Licence of the Lord; and after the Lessee makes a Feoffment, this shall forfeit his Estate, but not the Estate of the Copyholder. Livery upon any Conveyance of a Copyhold Estate amounts to a Forfeiture. 1 *Roll. Abr.* 309.

Feoffments;
ibid. 92, 97,
&c.

Cutting Timber, &c.
ibid. 97, 189.

If a Copyholder for Life cuts down Timber-Trees, it is a Forfeiture of his Copyhold. But a Copyholder may take House-boot, Hedge-boot and Plough-boot upon his Copyhold Lands of common Right, as a Thing incident to the Grant; if he be not restrained by Custom, that the Copyholder shall not take it but by Assignment of the Lord.

his Bailiff. And if the Lord where the Tenant hath such Boots, cuts down all the Wood standing upon the Lands, to prevent the Copyholder of his Boots, he may have an Action of Trespass against the Lord. A Copyhold is granted to two for Life Successively, where the Custom is they may not cut Trees; if the first Tenant cuts, it is a Forfeiture to him in Remainder, as well as of his own Estate.

If a Copyholder committeth Waste, voluntary or permissive, this is a Forfeiture: *Waste, ibid. 194.* Voluntary, as if he plucketh down any ancient built House, or if he buildeth any new House and then pulleth it down again; or if he plough up Meadow, whereby the Ground is made worse; or lop the Trees, or if he selleth the Loppings; or if he cut down Fruit-trees for Fuel, &c. these are Forfeitures.

Permissive Waste, as if a Copyholder suffereth the Roof of his House to let in the Rain, or the House it self to fall down for want of Reparation; or if he suffer his Meadow for want of mending his Banks to be surrounded with Water, so that it becomes marshy; or his arable Ground to be so surrounded that it becomes unprofitable: These and the like permissive Wastes are Forfeitures. *Lex Mans. 97, 100.*

If a Husband commit Waste in Copyhold Lands, which he hath in Right of his Wife, this is a Forfeiture of the Wife's Copyhold.

Upon a Forfeiture of a Copyhold, for refusing to pay Fines, Services, &c. the Lord may grant it before Seizure; because this is a Determination of the Will, and is immediately in the Lord as in his Reversion; But *Grants of Forfeitures; ibid. 92, 102, 103, &c.*

The practising Attorney:

Forfeitures proceeding from Treasons, Felonies, Alienation by Deed, &c. a Presentment of it in Court must be made, because by common Presumption the Lord cannot have Knowledge of this without Notice be given him.

The METHODS of COURT-KEEPING, and Business therein.

IN the keeping of Courts, it is requisite that the *Steward* first be impower'd, by proper Warrant, to hold them; and the *Bailiff*, by Precept, to summon the Courts: The *Steward* has his Authority from the Lord, and the *Bailiff* from the *Steward*, and both are made in the following Form.

A Warrant from a Lord of a Manor, to a Steward to keep Court.

KNOW all Men by these Presents, That I the Right Honourable T. Lord A. &c. Have made, constituted and appointed, and by these Presents, do make constitute and appoint A. B. of, &c. Gent. my Steward of all those my Manors and Lordships of, &c. in the County of, &c. giving, and by these Presents granting unto the said A. B. full Power and Authority to keep and hold all my Courts-Leet, Courts-Baron, and other Courts within the Limits aforesaid, and to do and execute all Things belonging to the Office of a Steward, and receive and enjoy

all Perquisites, Profits and Advantages thereof and thereto belonging, during my Will and Pleasure. *In Witness, &c.*

A Steward's Precept to the Bailiff to warn the Court.

THIS is to require you to summon and give Notice to all the Tenants of the Manor, of, &c. And all other Persons that do owe Suit and Service to the Courts of the said Manor, personally to be and appear at the Court-Leet and Court-Baron, to be holden for the said Manor at the usual Place, &c. on *Tuesday* the 20th of *October* next, then and there to do and perform their several Suits and Services according to the Custom of the said Manor. Given under my Hand, &c.

To C. D. Bailiff of the
Manor of, &c.

This Notice is usually given by the Bailiff a Fortnight before the Court is kept; and is commonly done in the Church of the Manor or Parish, on a *Sunday* immediately after Morning Service, or at the Church Door at the same Time.

At the Time appointed for the Court, the Steward having placed himself in Court, and entered the Title of it in his Minute-Book, the Bailiff or Tythingman is to make three Proclamations, and repeat after the Steward.

The Praefising Attorney:

Oyez, All Manner of Persons that owe Suit and Service to this Court-Leet and Court-Baron, now to be holden in and for this Manor of, &c. belonging to the Right Honourable T. Lord A. &c. draw near and give your Attendance.

The Court being thus opened, you are to swear the Constables, Tythingmen, &c.

Oath of the Constable, or Tythingman, to make Presentments.

YOU shall enquire into and true Presentment make of the several Offences committed relating to your Office since the last Court.

So help you God.

If there be more than one Tythingman (as in Case of the Hundred Court) swear them all in like Manner: Then receive from them the common Fines imposed on their several Parishes; and take their *Resiant Rolls*, which are to be called over thus:

Resiants of the Tithing of, &c. draw near and answer to your Names, &c. Call them one by one, and mark them that Answer, *as* for appeared.

Next you proceed to impanel your *Juries*, first calling upon the Bailiff or Tythingman for the Return of the Court-Leet Jury: And after Proclamation,

You good Men that are returned on the Jury to enquire for our Sovereign Lord the King,

King, in this Court-Leet, answer to your Names. In calling them over, mark those that appear: Then swear the Foreman.

Oaths of Jurymen in the Court-Leet.

YOU, as Foreman of this Jury, shall enquire and true Presentment make of all such Things as shall be given you in Charge; the King's Counsel, your own, and your Fellows, you shall well and truly keep: You shall present nothing out of Hatred or Malice, nor conceal any Thing thro' Love, Fear or Affection; but in all Things you shall well and truly present as the same shall come to your Knowledge.

So help you God.

Swear the rest of the Jury, by Four at a Time, in the following Manner.

The like Oath that E. F. your Foreman hath taken on his Part, you and either of you shall well and truly observe and keep on your Parts.

So help you God.

In the second Four, add, *And others your Fellows have taken on their Parts; And when you come to the last Four, &c. say, The rest of your Fellows, &c.*

If any one return'd on the Jury, do not appear; or if any Suitor present in Court refuse to be of the Jury, the Steward may fine them; and Strangers, in Case of Want of

The Practising Attorney:

of Jurors, may be sworn of the Cour-Leet Jury, and fined on their Refusal to serve. If the Jury do not present every Thing, but are negligent in their Duty, the Steward may impanel a second Jury to enquire into the Defaults and Concealments of the first, and Fine them 20 s. each.

After you have sworn your Court-Leet Jury, call over your *List of Tenants*, the Bailiff, or Cryer, repeating after you each Name and marking those that appear: Then out of the Copyholders, chuse your Homage or Court-Baron Jury; and make Proclamation and say,

You that are the Lord's Tenants, and are now returned to be of the Homage in this Court-Baron, make Answer to your Names.

The Names of the Jury being called over, let the Bailiff or Tythingman count the Number of them after you: And then call the Foreman of the Homage to the Book, and swear him.

Oaths of Jurymen in the Court-Baron.

YOU as Foreman of this Homage, with the rest of your Fellows, shall enquire and true Presentment make of the several Things which shall be given you in Charge: You shall spare no one out of Love, Fear or Affection; nor prejudice any out of Hatred or Malice; but shall well and truly present the

the several Offences which shall come to your Knowledge.

So help you God.

The other Homagers you are to swear by Four at a Time, in the same Manner as the Jury in the Court-Leet.

And then, after Proclamation made, proceed to your Charge in both of these Courts.

See the *Charge* in a Court of Survey *post*.

Charge in the Court-Leet.

Gentlemen,

AL L you that are sworn, and first you of the Court-Leet Jury, draw near and hear your Charge : Gentlemen, what you are by your Oaths obliged to enquire upon, I shall reduce to two Heads ; and they are either of such Things as are here enquirable and presentable only, and not punishable, or else of such Things as are both presentable and punishable in this Court.

The first Head includes the more Capital Offences, such as Petit Treasons, Felonies, and the Accessories therein ; for these Offences, tho' they are presentable in this Court, yet they are not punishable here ; but the Presentment must be certified into some superior Court, where the Offenders are to be prosecuted and punished according to Law.

The second Head takes in Offences that are both presentable and punishable in this Court ; and they are such as these : First, you are to enquire of Bloodsheds, if any Person

Person within the Jurisdiction of this Court-Leet, hath wilfully or maliciously drawn Blood from the Person of another, it is here punishable.

Next, you are to enquire whether the Constable and Tythingman have truly presented all Things belonging to their Offices, and particularly whether they have discharged their Duties in arresting of Felons, pursuing of Hues and Cries according to Law, and apprehending of Rogues, Vagabonds, and sturdy Beggars.

And you are to take Notice, that there ought to be a Pair of Stocks kept in Repair in each Tithing, for the securing of idle and disorderly Persons ; or the Vill shall be amerced : And you are to enquire whether any Pound-Breaches of Cattle, or any Rescous have been made ; and into all Manner of Affrays, and Breaches of the Peace, Riots, Routings and unlawful Assemblies.

You are also to enquire whether any Persons do keep Ale-houses without Licence ; or having Licences, do suffer Disorders to be committed in their Houses, and to present such Offenders : And Persons keeping unlawful Gaming-Houses, with the Frequenters thereof, are here punishable : So are common Barrators, and Eves-droppers, such as raise Quarrels, and hearken after News, with Intent to spread it abroad, and to cause Discord and Enmity in the Neighbourhood.

There is likewise another Sort of Persons found to be very mischievous, and they are such as have no competent Estates to maintain

tain themselves, and refuse to be employed for a Livelihood, but commonly spend the Day in Sleep and Idleness, and at Night betake themselves to robbing of Hen-roosts, Fish-ponds, and such like Villainies: These Persons the Law adjudges dangerous, and so ought you, if any such come to your Knowledge.

You shall enquire of such Persons as unlawfully take, kill, or destroy Hares, Pheasants, Partridges, or other Game, or Doves or Pigeons, by Guns, Nets, or otherwise, which are here punishable: And you are to enquire whether any Person do keep and make Use of Hounds, Greyhounds, and other Dogs or Guns, whereby to destroy the Game, that have no Estates which by the Law do qualify them for so doing.

If any Victuallers have conspired together to sell their Victuals but at certain Prices, or have put to Sale any Victuals not wholesome for Man's Body: Or if any Labourers or Artificers have combined together to work but at certain Rates, or on certain Times, or shall refuse to compleat the Work they have begun and undertaken; they are here punishable.

And if any Persons have used false Weights, or false Measures, or double Weights, or double Measures; that is, a Great to buy by, and a Small to sell buy, in Deceit of the People, it is also punishable in this Leet.

A Tanner having put to Sale any Leather before it be legally searched and sealed, or any insufficient Leather not being thoroughly wrought tanned and dried, is here to be punished.

You

The Practising Attorney:

You are to make diligent Enquiry into Offences committed by Forestallers, Ingrossers and Regrators: A Forestaller is one that buys Corn, or other Provisions, that is carrying to the Fair or Market to be sold, before it be brought into the Fair and Market. An Ingrosser is one that buys Corn growing upon the Ground (otherwise than by Demise and Grant) or any Butter, or Cheese; or other Victuals, with an Intention of selling the same again for unreasonable Profit. A Regrator is one that buys Corn, or other dead Victuals in open Fair or Market, and the same doth sell again in some other Fair or Market within four Miles of the same Place. All these are punishable in this Court.

Strict Enquiry ought to be made of Cottages erected contrary to Law: Now the Law is, that if any one shall set up a Cottage, without laying of four Acres of Land to it, or the Allowance of the Lord of the Soil, and the Justices of Peace in open Sessions, he shall forfeit 10 l. for so doing, and 40 s. a Month for the Continuance of it. And if any Owner or Occupier of a Cottage, shall suffer any Inmates, or more Families than one, to cohabit therein, he shall forfeit to the Lord of the Leet 10 s. *per* Month.

You are to inspect and examine into your Highways and Bridges; how they are repaired and amended, and whether the several Persons concerned therein, have done their due Services towards repairing the same: And if the Hedges be kept in good Repair, and the Ditches adjoining be kept low and scour-

ed as they ought: For Defaults wherein, this Court may set a Fine upon Offenders.

If any Foot-path to Church, Mill, or Market be denied, that hath been an ancient and accustomed Way; or if any House, Wall, Hedge or Ditch, be erected or made in the King's Highway; or any Water-course stopp'd, or turned thereunto, or out of its antient Course; if any Carrion, Dung, or other offensive Thing, be laid in or near to the Highway, or any other Nufance whatsoever, to the Annoyance of the King's Subject, it is here presentable and punishable.

You are to take Notice what Officers, within the Precinct of this Leet, ought to be now discharged of their respective Offices, and to present the Names of other fit Persons to serve in their Places.

And you shall enquire of all other Matters, that are in this Court-Leet enquirable and presentable, as fully and effectually as if the same had been particularly named to you.

Charge in the Court-Baron.

YOU that are sworn of the Homage, your Charge is to enquire into and present such Things as relate to the Court-Baron of this Manor; and they are either between Lord and Tenant, or betwixt Tenant and Tenant.

First, you ought to enquire what Advantages have happen'd to the Lord since the last Court, either by Escheat or Forfeiture: As if any Freeholder of this Manor hath committed

committed Felony, and thereof hath been lawfully convicted; the King shall have Yeat Day and Waste, and afterwards the Lands shall fall to the Lord by Escheat. And if a Bastard hath purchased any Land within this Manor, and be dead, without Issue of his Body lawfully begotten, he can have no Heir by Law, so that the Lord shall have his Land by Escheat.

If any Copyholder within this Manor hath committed Felony, and thereof be convicted; it is a Forfeiture of his Copyhold Estate. And if any Copyholder hath leased out his Copyhold without the Lord's Licence, for more than a Year and a Day, it is a Forfeiture of his Copyhold Estate: Or if he hath let it out to an Undertenant for a less Term, and hath not retained enough thereof in his own Hands, whereby the Lord's Dues may be fairly answered, he is here to be amerced.

Where any Copyholder hath suffered the Buildings upon his Copyhold to run to Decay, and fall down for want of Reparation; or hath committed Waste in Felling Timber-Trees without Assignment, or in lopping them at unseasonable Times in the Year, whereby they die; in cutting Fruit-Trees, or Timber-Trees for firing, having other Wood sufficient; or in ploughing up of ancient Meadow, &c. They are Forfeitures of his Copyhold Estate. And if any Copyholder within this Manor having two Copyholds, hath impaired the one to improve the other, it is a Forfeiture of the Copyhold so impaired.

If any Copyholder of this Manor refuseth to do Suit of Court, having personal Summons ; or to be sworn of the Homage, or to make Presentment, after he is sworn on the Jury ; or to pay Rent to his Lord, being demanded on the Land ; or to perform the Services due to the Lord ; they are all of them Forfeitures of his Estate.

You are to enquire whether there be any Freeholder of this Manor dead, or that hath alienated his Estate ; or any Leaseholder or Copyholder dead since the last Court, or before, and his Death not yet presented ; what hath happened to the Lord upon his Death, and who is the next Tenant.

And you are also to enquire, whether there be any Rent-Service, or Custom withheld from the Lord ; or any of the Lord's Lands be unjustly kept from him : Whether any Bound-Stones or Land-Marks, between this Lordship and another, or between Tenant and Tenant, have been removed ; or any Incroachment hath been made upon the Lord's Waste ; or any Trespass upon the Lord's Royalties, by fishing, fowling, hawking or hunting.

If any Houses want repairing ; Hedges, Gates or Stiles want mending ; or Ditches want scouring. Or if any hath prejudiced his Tenement, by carrying the Compost or Soil there made, to other Lands, or by penning his Sheep thereupon, to the impoverishing his Tenement ; you are to present the same.

You shall enquire of Estrays ; as where any strange Beast comes into a Lordship, and

The Practising Attorney:

is not claimed in a Year and a Day, it falls to the Lord of the Manor as an Estray.

And you shall enquire whether the Orders of the last Court or any other preceding Court, have been duly observed or not; and wherein and by whom any Default hath been made.

You are likewise to enquire whether the several Tenants of this Manor be now here to do Suit of Court; and to amerce those who have made Default in their Appearance.

And if there be any Thing else that concerns the Lord's Interest, or any Thing unjustly done or omitted, between Tenant and Tenant, you have it in Charge to present it.

After the Charge is thus delivered, and Proclamation made, say, (the Cryer repeating after you)

If any Person can inform this Court, or Inquest, of any Treasons, Felonies, Bloodsheds, or any other Thing now given in Charge, or inquirable at this Leet, let him come into the Court, and he shall be heard.

If any comes in, *Swear him*, thus:

The Evidence that you shall give to this Inquest, shall be the Truth, the whole Truth, and nothing but the Truth.

So help you God

Then say, (the Bailiff or Cryer also repeating it,)

If any Man will enter any Plaint, let him come into the Court, and he shall be received.

And if any appear and make their Plaint, enter the same after the following Manner (leaving a Thumb's Breadth or more between each)

each Plaintiff, for inserting Appearances, Defaults, Pleas, Amerciaments, &c.

Note, no Plaintiff or Action lies here, where the Debt or Damages is above 40 s.

A. B. *Complains of C. D. in a Plea of Debt for 39 s. 11 d.*

C. D. *Complains of E. F. in a Plea of Trespass on the Case, to Damage 38 s. 10 d.*

K. L. *Widow complains of G. H. of a Plea that he render Goods and Chattels to the Value of 28 s. 6 d.*

J. S. *complains of S. T. of a Plea of Trespass and Assault, &c. to Damage 30 s.*

And after the Entry of each Plaintiff, you are to call the Plaintiff therein three Times, thus :

A. B. *Appear at this Court, or thou losest thy Plaintiff.*

And if the Plaintiff appear by Attorney, then enter the Warrant of Attorney, (*viz.* his Name) over the Plaintiff's Name. Then call the Defendant three Times, thus, *viz.*

C. D. (*or E. F. or G. H. &c.*) *appear and answer to A. B. (or K. L. &c.) in a Plaintiff (or Action) of Debt, (or Trespass on the Case Trover, &c.) or thou forfeitest thy Goods distrained, and further Process will be awarded against thee.*

If the Defendant appear, enter his Appearance after the Plaintiff, *viz.* C. D. (*or E. F. &c.*) *comperuit.*

Note ; the Plaintiff has Time to declare till the next Court-Day after the Defendant's Appearance ; and the Defendant imparles

The Practising Attorney:

till the next Court-Day after, when he is to plead, &c.

See of further Proceedings on Plaints in this Court *postea*.

And then, after Proclamation (twice) adjourn the Court, thus:

All Persons that have any Thing further to do at this Court-Leet, (or Court-Baron,) may now withdraw themselves, so as they appear here again at two of the Clock in the Afternoon.

On adjourning the Court, the Steward must deliver to the Foreman of each Jury the Presentment of the last Courts; and enter the Names of the Juries, and the Surrenders and Admittances, in his Minute-Book, to be ready against the Afternoon.

When they are returned in the Afternoon, after Proclamation (twice) say,

All you that were adjourned to appear at this Time and Place, draw near and give your Attendance, and answer to your Names.

Call over the Names of the Court-Leet Jury, ask the Foreman for the Presentment, if they are all agreed to it, and who shall deliver the same in for them; (to which they answer, the Foreman) and if they are content it shall be amended in Form, so as it be not changed in Substance; to which they answer, they are.

After the Presentment is read over, and altered in Form, and the Fines are fixed, then

Of, Lawyer's Office.

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then you are to swear new Officers for the following Year.

Oath of a Constable, or Tithingman, to serve the Office.

YOU shall well and truly serve our Sovereign Lord the King, and the Lord of this Leet, in the Office of a Constable in and for this Hundred of, &c. (or in the Office of a Tythingman in and for the Tything of, &c.) until you be thereof discharged according to due Course of Law: You shall from Time to Time well and truly do and execute all Things belonging to the said Office, according to the best of your Knowledge.

So help you God.

Oath of Assessors, (viz. Tenants of the Manor, two whereof are Judges of the Amerciaments) in the Court-Baron.

YOU shall well and truly assess and affirm the several Amerciaments here made, and now to you read over: You shall spare no one out of Love, Fear, or Affection; nor raise or enhance any one out of Malice or Hatred; but impartially shall do your Duties herein.

So help you God.

The Officers being sworn, call over the Homage, or Court-Baron Jury, and ask for their Presentment, &c. in like Manner as in the Court-Leet: And then take Surrenders, and make Admittances, &c.

The Practising Attorney:

And Note; when the Defendant has put in Answer (or Plea) if the Plaintiff join Issue thereupon, they may proceed to Trial the next Court-Day, (*viz.* if they proceed not further by Replication, Rejoinder, Rebutter, &c.) and on joining Issue, issue a *Venire Facias*, thus:

The Manor of } **W**. B. Steward of the
M. in the Coun- } Manor aforesaid,
ty of O. } To G. L. Bailiff of the same
Manor Greeting: I Command (or, I Order)
thee, that thou make, (or Cause to come
12 good and lawful Men of thy Bailiage, that
they be and appear at the next Court to be held
for the Manor aforesaid, at the Mansion-House
there on Monday, &c. at Eight a Clock in
the Forenoon; To try such several Issues between
Parties and Parties, as shall then and there be
put (in Issue) before them (or, to try the Issue
joined between A. B. Plaintiff, and C. D. De-
fendant, of a Plea of Debt, &c.) And this thou
may'st in no wise omit. Dated at M. aforesaid,
(such a Day and Year)

By W. B. Steward there.

And when the Panel is returned, enter on the Head thereof;

The Jurors between A. B. Plaintiff, and C. D. Defendant, of a Plea of Debt (or Covenant, &c.)

When the Jury are brought to the Bar, bid the Cryer (or Bailiff) make Proclamation (twice) and say,

“ You, good Men, that be here impanel-
led to try the Issue between A. B. Plain-
tiff,

"tiff, and C. D. Defendant, answer to your
 "Names at the first Call, upon the Pain
 "and Peril that shall fall thereon".

And if 12 appear, swear them thus, viz.

"You shall well and truly try the Issue
 "joined between A. B. Plaintiff, and C. D.
 "Defendant, according to your Evidence.
 "So help you God; and kiss the Book".

And as they are sworn, enter before every
 Man's Name, *Sworn*. And being all sworn,
 bid them stand together and hear their Evi-
 dence.

Then call the Witnesses, and as they ap-
 pear in Order to give Evidence, swear them
 severally, thus.

"The Evidence which you are to give to
 "this Inquest, touching the Matter in Va-
 "riance between A. B. Plaintiff, and C. D.
 Defendant, shall be the Truth, the whole
 Truth, and nothing but the Truth.

So help you God. Kiss, &c.

And after all the Evidence is given, let
 the Jury depart to agree upon their Verdict,
 and when they are agreed, and returned in-
 to Court, let the Bailiff call 'em over, and
 every Man answer to his Name distinctly;
 and then say,

Are you all agreed of your Verdict? And
 if the Jury reply yea; say, Who shall say
 for you? Jury, The Foreman. Then call
 the Plaintiff thrice. Say, A. B. appear, or
 thou lovest thy Plaint. And on the Plaintiff's
 Appearance, ask the Jury;

Gentlemen, Do you find for the Plaintiff,
 or for the Defendant? and if they reply, For
 the Plaintiff; ask them. What Damages do

The Practising Attorney:

you assess. *Jury* reply, *Six-pence*. Then say you, Gentlemen, hearken to your Verdict; you say, you find for the Plaintiff, and assess Damages Six-pence, and Costs of Suit Ten-pence, and so you say all. They reply, *Yea*.

Then bid the Plaintiff pay the Jury, and so enter the Verdict as 'tis found: And so proceed to the Trial of other Issues, in the like Manner.

See further of these Matters in *Scroggs* of Courts, Pa. 172, 173, &c. And Note; the usual Fees on these Proceedings are as follow, *viz.*

The Steward's Fees.

	l.	s.	d.
F OR entering a Plaint.	0	0	8
For a Warrant of Attorney.	0	0	4
For every other Warrant.	0	0	8
For a general Distringas or Attachment.	0	0	8
For a Special Distringas or Attachment.	0	1	6
For a Bond or Rule for Appearance.	0	1	0
For Entering Effoins every Name.	0	0	4
For Entering an Impar lance.	0	1	0
For a Copy of every Declaration.	0	1	0
For allowing of every Answer.	0	1	0
For a Copy of every Answer.	0	1	0
And so for allowing or copying every Replication, Rejoinder, &c.	0	1	0

For

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For entring every Rule, or De- fault or Nonsuit.	}	0	0 4
For every Subpœna for Witnesses.		0	0 8
For every Oath administered in Court.	}	0	0 4
For a Venire Facias 2 s. and for returning it 2 s.	}	0	4 0
For entring a Judgment.		0	2 0
For every <i>Fieri Facias</i> , or <i>Sciri Facias</i>		0	2 0
For every <i>Superfedeas</i> .		0	2 4
For a Transcript on a Plaint, and Allowance.	}	0	1 8
For allowing a Writ of False Judgment.	}	0	6 8

The Attorney's Fees.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
F OR his Appearance,		0	2 0
For drawing every Declara- tion, Plea, Replication, Re- joinder, Rebutter, &c.	}	0	1 0
For every Court-Day while the Action depends,	}	0	2 0

The Bailiff's Fees.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
F OR executing every Sum- mons of the Plaintiff.	}	0	0 4
For executing each Summons of the Defendant,	}	0	0 8
For executing a <i>Distringas</i> on the Plaintiff.	}	0	0 4
For the like on the Defendant,		0	0 8
3			For

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For every <i>Venire facias</i> ,	0	2	0
And (if tried) for the Return,	0	2	0
For every <i>Fi. Fa. Sci. Fa.</i> or <i>Re-plevin</i> .	0	2	0
Also every Juryman receives for every Cause.	0	0	8

A Surrender of an Estate in Court.

I *A. B.* do surrender and yield up into the Hands of the Right Honourable *T. Lord A. &c.* Lord of this Manor, *All* that Messuage and Tenement, with the Appertinances within this Manor, now in the Possession of, *&c.* and all my Estate, Right, Title, Interest, *Possession, Reversion,* Claim and Demand whatsoever, of, in and to the same, to the End the said Lord may do therewith his Will: And in Token thereof I deliver up this Verge.

[Delivering to the Steward a Pen, put into his Hand for that Purpose.]

There is no Occasion for a second or third Life to surrender, unless they are joint Purchasers; for if they are not so, the Surrender of the first Life, (*viz.* the Purchaser) is good in Law for all. But when there are more Purchasers than one, in the general Words of the Surrender, the first Life, says *Possession* only, and the second or third say *Reversion*: And in all the rest they say the same the one as the other.

When the Surrender is taken, the Steward proceeds to Admittance, thus:

Admit.

Admittance of a Tenant in Court.

Gentlemen of the Homage, you are to take Notice, That the Messuage and Tenement, with the Appertinances now surrendered, is granted anew to the said *A. B.* as sole Purchaser, to hold to him the said *A. B.* and *C.* and *D.* his Sons, for the Term of their Lives, and the Life of either of them longest living, successively, at the Will of the Lord, according to the Custom of this Manor; by the yearly Rent therefore of, &c. and by all other Rents, Suits, Services and Customs therefore due, and of Right accustomed: And for such Estate so had in the Premises, the said *A. B.* gives to the Lord for a Fine the Sum of, &c. in Hand paid (or secured to be paid): And so he is admitted Tenant thereof: And I do hereby give to you Seisin thereof, to hold the same accordingly.

[Turning to the Tenant, and delivering him a Pen, or Rod.]

Admittance of a Tenant, after the Death of a Life.

YOU are admitted Tenant to all that Messuage and Tenement, with the Appertinances, within this Manor, whereof *C. D.* lately died possessed: And I do hereby give you Seisin thereof, to hold the same for Term of your Life, (or Widowhood) according to the Custom of this Manor.

Then the Tenants admitted are to take the Oath of Fealty,

Oath

Oath of Fealty of Tenants, to their Lords.

YOU shall swear to become a true Tenant to, &c. Lord of this Manor, for the Estate to which you are now admitted: You shall pay, bear, and do all such Rents, Duties and Services, as shall be therefore due and of Right accustomed: You shall from Time to Time be ordered and justified in all Things concerning your said Estate, at the Lord's Courts to be holden in and for this Manor of, &c. as other the Tenants of the said Manor, for their respective Estates are, shall, or ought to be: And you shall in all Things demean your self as a faithful Tenant.

So help you God.

All Business of this Kind being over, you are to discharge the Courts, by saying, (the Cryer repeating after you,)

O yes, &c. All Manner of Persons that have this Day made their Appearance, or that have any Thing more to do at this Court-Leet (and Court-Baron) may from hence depart, and keep their Day and Hour again upon a new Summons.

God save the King, and Lord of the Manor.

Note; During the Time of the Court, the Bailiff of the Manor usually collects the Lord's Rent of the Tenants; for which Purpose he has a Seat at the lower End of the Steward's Table.

Of

Of Extraordinary Business of Courts.

A Letter of Attorney to surrender a Copyhold Estate.

K Now all Men by these Presents, That I *A. B.* of, *Ec.* have made, constituted and appointed, and by these Presents do make, constitute and appoint *C. D.* of, *Ec.* my lawful Attorney, for me, and in my Name, to appear at the next Court to be holden in and for the Manor of, *Ec.* on, *Ec.* next, and then and there for me, and in my Name as aforesaid, to surrender and yield up into the Hands of the Lord of the Manor aforesaid, one Messuage or Tenement, *Ec.* with the Appertinances within the said Manor: All which said Premisses I the said *A. B.* do hold (as sole Purchaser) for my own Life, and the Lives of, *Ec.* by Copy of Court-Roll of the said Manor of, *Ec.* bearing Date, *Ec.* and all the Estate, Right, Title, Interest, Possession, Reversion, Claim and Demand whatsoever, as well of me the said *A. B.* as of the said, *Ec.* and of either or any of us, of, in and to the same, ratifying and confirming, and by these Presents allowing all and whatsoever my said Attorney shall do, or cause to be done, in the Premisses, by Virtue of these Presents. *In Witness, Ec.*

This Letter of Attorney is to be read over in Court by the Steward, in the Hearing of the Homage; after which, the Attorney is to execute his Power, by saying after the Steward, as follows:

I.C.

The Practising Attorney:

I C. D. By Virtue of the Letter of Attorney to me made by *A. B.* and of the Power and Authority thereby given, do, for and in the Name of the said *A. B.* surrender and yield up into the Hands of, &c. Lord of this Manor, all that Messuage and Tenement, with the Appurtenances within this Manor, in the Possession of, &c. And all the Estate, Right, Title, Interest, Possession, Reversion, Claim and Demand whatsoever of the said *A. B.* and of, &c. of, in and to the same, to the End the Lord may do therewith his Will: And in Token thereof I deliver up this Verge.

A Surrender of a Copyhold out of Court.

IT is to be remembred, That on, &c. at *B.* in the County of, &c. *A. B.* (who claims to hold for Term of his Life, &c. by Copy of Court-Roll of the Manor aforesaid, bearing Date, &c. one Messuage or Tenement, with the Appurtenances within the said Manor of, &c.) came before me *G. J. Gent.* Steward of the said Manor, and in the Presence of *C. D.* and *E. F.* two of the customary Tenants of the said Manor, did surrender and yield up into the Hands of, &c. Lord of the Manor aforesaid, the said Messuage or Tenement, &c. above-mentioned, with the Appurtenances; and all the Estate, Right, Title, Interest, Possession, Reversion, (if more Lives than one) Claim and Demand whatsoever of him the said *A. B.* (or as well of him the said *A. B.* as of, &c.) of, in and to the same; and of, in and to every Part
and

and Parcel thereof, to the End the said Lord of the said Manor may do therewith his Will.

A. B.

Taken the Day and Year first abovesaid, before me

W. B. Steward there

In Presence of us

*C. D. } Tenants.
E. F. }*

A Surrender of a Leasehold by Indorsement.

I *A. B.* of, &c. do by these Presents surrender and yield up into the Hands of, &c. All that Messuage or Tenement, and Lands, with the Appertinances in the Indenture within granted; and all my Estate, Right, Title, Interest, Claim, and Demand whatsoever, of, in and to the same, by Virtue of the said Indenture, or by any other Ways or Means whatsoever, together with the same Indenture to be cancelled. *In Witness, &c.*

A License to a Tenant to let his Tenement.

At a Court held for the Manor of, &c. the Day, &c.

License is granted unto *A. B.* to let his Messuage or Tenement, with the Appertinances, within this Manor, to any Under-

The Practising Attorney:

der-Tenant or Under-Tenants, for the Term of 7 Years now next coming from the Date hereof, if the said *A. B. &c.* shall so long live; *Provided* the Houses, Hedges, Ditches, and other Inclosures, be from Time to Time kept well and sufficiently repaired and amended, and the Rents, Duties, Services and Customs therefore due to the Lord, be well and truly rendred, paid and performed: Otherwise this License to be void.

A Condition for the Payment of Heriots.

THE Condition of this Obligation is such, That if the above bound *A. B.* his Heirs, Executors or Administrators, do and shall well and truly pay, or cause to be paid unto the above named *T. Lord A. &c.* his Heirs and Assigns, the full Sum of, *&c.* for and in Satisfaction of one Heriot next happening to be due and payable unto the said *T. Lord A. &c.* his Heirs or Assigns, for a Heriotable Tenement within the Manor of, *&c.* aforesaid, by him the said *A. B.* now holden for Term of the Life of, *&c.* on the Decease of him the said, *&c.* according to the Custom of this Manor. Then, *&c.* or else, *&c.*

A Warrant constituting a Bailiff of a Manor.

K Now all Men by these Presents, That I, the Right Honourable *T. Lord A. &c.* Lord of the Manor of, *&c.* have made, constituted and appointed *E. F.* of, *&c.* my Bailiff of and for my Manor aforesaid, for
me

me and to my Use to collect and gather, ask, require, demand and receive of and from all and every my Tenants, that have held or enjoyed, or now do or hereafter shall hold or enjoy any Messuages, Lands or Tenements, from, by or or under me, within my said Manor of, &c. all Rents and Arrears of Rents, Heriots and other Profits, that now are or hereafter shall become payable, due, owing or belonging to me within the said Manor; and in Default of Payment thereof, to distrain for the same from Time to Time, and such Distress or Distresses to impound, detain and keep until Payment be made of the said Rents and Profits, and the Arrears thereof: And I do also further impower and authorize the said *E. F.* to take Care of and inspect into all and every the Messuages, Lands and Woods within my said Manor, and to take an Account of all Defects, Decays, Wastes, Spoils, Trespasses, or other Misdemeanors committed or permitted within the said Manor, or any the Messuages, Lands or Woods there; and from Time to Time to send and transmit to me in Writing a just and true Account thereof, to enable me to redress, reform and punish all Offenders of that Nature: And further, to act and do all other Things that to the Office of a Bailiff of the said Manor belongs and appertains, during my Will and Pleasure, and no longer: And in Recompence for his Pains, he is to receive yearly the Sum of, &c. *In Witness, &c.*

D d

A War.

The Practising Attorney:

A Warrant to a Bailiff to levy Amerciaments.

The Manor of } Estreats of Amerciaments in a
A. &c. } Court-Baron there holden the
Day, &c. as followeth:

	l.	s.	d.
Imprimis, Of A. B. a customary Tenant, for refusing to appear at the Court,	0	1	0
Item, Of C. D. for not repairing his House, according to an Order of the last Court,	0	3	4
Item, Of E. F. for not scouring and cleansing his Ditches, pursuant to an Order of the last Court,	0	6	8
Item, Of, &c. —————			
Total, &c. -----			

A Warrant to a Bailiff to assign Timber.

At a Court held for the Manor of, &c. the
Day, &c.

A. B. is allowed one Timber-Tree, &c.
now standing and growing in, &c.
within the Manor aforefaid, the same to be
had and taken from and out of the Lands of the

the said, &c. by the Consent of the present Tenant or Occupier of the Premisses, and by the Assignment of the Bailiff of the Manor aforesaid, for and towards the repairing the Tenement of the said A. B. within the said Manor, and not otherwise. *Given, &c.*

W. B. Steward there.

To E. F. Bailiff of the said Manor.

An Order of Court for a Constable to be sworn by a Justice of Peace.

The Hundred **{** *A* *T* the legal Court and View of Frank-Pledge of the Lord the King there held the 23d Day of October in the Year of the Lord 1731. A. B. was elected to the Office of Constable of the Hundred aforesaid, (or, to the Office of Tithingman for the Tithing of, &c. within the Hundred aforesaid) for the Year now following: But hath not come into Court to undertake that Office; Therefore it is ordered by the Court, That he A. B. shall appear before some Justice of Peace of the Lord the King, and give his Oath to execute the Office aforesaid, under the Pain of 5l.

W. B. Steward there.

*Of Contracts in Court, Fees of
the Steward, &c.*

A Copyhold Estate, or Freehold Lease for three Lives, is worth to be sold 14 Years Purchase ; 8 Years for the first Life, 4 for the second, and 2 for the third Life : Or seven, five and two Years Purchase. For a Chattle-Lease for three Lives, 13 Years Purchase is given. Exchanging a Life is usually one Year's Purchase, unless it be a sickly Life for a healthy one, a Woman's for a Man's, or where there is only one Life on an Estate ; and then two Years Purchase (or more) must be given. Turning Widowhood into Life, 2 Years Purchase. A Widowhood is valu'd at one Year's Purchase. And for a License to let a Copyhold Estate, half a Year, or a Year's Value, is commonly demanded.

The Fee in Reversion of an Estate granted out on Lives, is worth 9, 7 and 5 Years Purchase, after one, two and three Lives, by Copy : And 10, 8, and 6 Years Purchase, after one, two and three Lives, by Lease : And the Fee of Lands in Hand, will yield 20 Years Purchase, or more, according to their Situation and extraordinary Apper tinances of Timber; &c.

Pursuant to the above Rates, *Contracts* are made with the Tenants on any Alteration of their Estates ; and these Contracts are entered in a Book, (the Tenants having Copies of

of them sign'd by the Steward) in Manner following:

The Manor of A. &c. } At a Court-Baron held for
the said Manor for the Right
Honourable T. Lord A. &c.
the Day and Year, &c. By
W. B. Gent. Steward there.

Contracted with A. B. in Consideration of, &c. to grant to him by Copy of Court-Roll, all that Messuage or Tenement, with the Appertinances called, &c. late in the Possession of, &c. to hold to him the said A. B. for his own Life, and the Lives of T. B. and L. B. his Sons, at the yearly Rent of &c. and for the Fine of, &c. to be paid on Delivery of the Copy.

A. B.

Contracted and agreed with C. D. of, &c. That in Consideration of the Surrender of a Copy of Court-Roll bearing Date, &c. whereby he the said C. D. held one Messuage or Tenement, with ten Acres of Land, called, &c. lying and being within the Manor aforesaid, for his Life, and the Life of, &c. And also in Consideration of the Sum of, &c. to be paid on, &c. the said C. D. shall have a Copy of the Messuage or Tenement, and ten Acres of Land aforesaid, with the Appertinances, to hold to the said C. D. for his own Life, and the Lives of, &c. under the yearly Rent of, &c. And the best Beast (or other Goods) for an Heriot, &c.

D d 3

C. D.

The Practising Attorney:

Contracted with *E. F.* and *G. H.* of, &c. that in Consideration of the Sum of, &c. to be by them paid down in Hand, they the said *E. F.* and *G. H.* shall have a Copy in Reversion of a Tenement with the Appertinances lying in the Manor aforesaid, now in the Possession of, &c. to hold the said Tenement with the Appertinances to them the said *E. F.* and *G. H.* (immediately after the Death, Surrender or Forfeiture of the said, &c.) for Term of their Lives successively, under the yearly Rent of, &c. and Heriot, &c. Provided, and this Contract is upon Condition, That the said, &c. the present Tenant, and the said *E. F.* and *G. H.* are all of them living at the Time of Payment of the Fine of, &c. aforesaid, and the Delivery of the Copy.

E. F. G. H.

Contracted and agreed with *J. K.* That in Consideration of the Sum of, &c. to be paid in and upon, &c. the said *J. K.* shall have a Lease of all that Messuage or Tenement, with the Appertinances, &c. to hold to the said *J. K.* for and during the natural Lives of him the said *J. K.* and, &c. and the Life natural of every and either of them longest living under the yearly Rent of, &c.

J. K.

Contracted with *L. M.* of, &c. to grant him a Lease of all that Messuage and Tenement, &c. to hold to the said *L. M.* for 99 Years, if the said *L. M.* and *L. M.* and *T. M.* his Sons, shall so long live, Lord's Rent, &c.

£c. Heriot best Beast or Goods, or 3 l. in Money, for the Fine of, &c. to be paid at the next Court on Delivery of the Lease.

L. M.

The Stewards Fees, on making of Contracts, &c. are as follow.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For Drawing and Ingrossing a Pair of Leases,	} 01	12	00
For a Copy and Admittance,			
For Admittance after the Death of a Life,	} 00	04	06
For the Contract Fee, under 50 l. Purchase-Money,			
For the Contract Fee, above 50 l. Purchase-Money, e- very 10 l.	} 00	02	00
For entring the Contract,			
For a Copy of License,	00	01	00
For Assignment of Timber- Trees,	} 00	01	00
For every Tree assigned,			
To the Bailiff for every Tree,	00	00	04
For holding a Court on Pur- pose to grant an Estate, if it takes up but one Day,	} 01	01	00

But I have known these Fees very much vary: In some Manors, instead of 32 s. a Guinea only has been paid for a Pair of Leases: In others 40 s. And for a great Nobleman's Estate, as a Duke, &c. 5 Guineas

The Practising Attorney:

is a common Fee. In many Manors only 15 s. and in some but 6 s. 8. is paid for a Copy and Admittance: And upon Admittances, on the Dropping of Lives, out of the usual Fee, the Bailiff hath 2 s. And the Crier 6 d.

Minutes of the Proceedings of Courts, and how entered.

A Hundred Court-Leet and Court-Baron.

For the Hundred of A. and B. **T**HE Court of the View of Frank-Pledge, (Free-Pledges) with the Court-Balld at C. &c. Iron of the now Right Honourable Thomas Lord M. there held the 7th Day of October, in the 5th Tear of the Reign of our Lord George the Second, King of Great Britain, France and Ireland, Defender of the Faith, &c. And in the Tear of Christ 1731. before W. B. Esq; Steward there.

Baily

Bailly of the Hundred — A. B. appears, and is Sworn.
Bailly of the Manor — C. D. appears, and is Sworn.
Constable — E. F. comes to take that Office, and is Sworn.

The Tithing of
 l. s. d.
 — 0 7 6 G. H. Tithingman there comes, and is Sworn.
 — 0 6 8 J. K. Tithingman there comes, and is Sworn.
 — 0 5 0 L. M. Tithingman there comes, and is Sworn.
 — 0 3 4 O. P. Tithingman there comes, and is Sworn.
 &c. (reciting all the Tithings.)

Jurors for the King.
 Abraham B. }
 William C. } Sworn.
 Francis D. }
 Henry E. }
 &c. (In all 12.) }

Homagers.
 Edmund A. }
 John B. } Sworn.
 William D. }
 Edward C. }
 &c. (In all 12.) }
 Affeerors { W. D. } Sworn.
 { J. N. }

The Practising Attorney:

William F. } Is admitted to a Tenement, and one Messuage, with the Appertinances, within the Manor aforesaid, late in the Tenure of J. F. deceased.
Admitted and Sworn.

Edw. M. } Surrender one Messuage or Tenement, and one Rod of Land lying within the Manor aforesaid, now in the Tenure of the said E. M.
John his Son }

P. John M. } They take the Premises a-
P. E. M. } fore said, at the yearly Rent of,
Ed. M. } &c. and one Heriot when it shall fall, and for a Time, &c.
Admitted and Sworn.

P. T. B. for Life } They take the Rever-
J. B. his Son } sion of one Messuage, and
Edw. B. } one Close of Pasture, &c. after the Death of E. F. at the Rent, &c. a Heriot of the best, &c. and for Fine, &c.

P. Wm. F. } They take one Tenement, and 5
P. John F. } Acres of Land, together with Com-
P. Tho. D. } mon of Pasture for 40 Sheep and 2 Cows, &c. with the Appurtinances within the Manor aforesaid, late in the Tenure of J. F. deceas'd, at Rent, &c. and one Heriot when it shall fall. For Fine, &c.
Admitted and Sworn.

P. stands

Dr, Lawyer's Office.

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P. stands for Purchaser, and where there are more than one with the Letter P. they are joint Purchasers: These Purchasers Lives may not be alter'd or exchanged, without their Consent; but others put in may be altered at Pleasure.

A Court-Leet and Court-Baron of a Manor.

Manor of A. } **T**HE Court of View of Free-Pledges with the Court-Baron of (such a Lord) held there for the Manor aforesaid, such a Day and Tear, before W. B. Esq; Steward there.

The Bailiff of the Manor - - - A. B. appears
The Titthingman of D. - - - F. G. comes
and is Sworn.

Jurors for the King.

The Homage.

William A.	} Sworn.	John A.	} Sworn.
Thomas B.		Edward B.	
and so 10		and so 10	
more, (as before.)		more, (as before.)	

P. John A. } Surrendred one Close of Meadow
P. William } called, &c. containing two Acres,
B. } and one Close of arable Land, called, &c. containing four Acres,
within the Manor aforesaid.

P. Thomas

The Practising Attorney:

P. Thomas A. } Have taken the Premises
 Eliz. his Wife, } aforesaid, and also one House,
 John their Son. } and one Garden and Orchard
 adjoining, containing by Esti-
 mation one Acre, and one Close
 called, &c. containing, &c.
 within the Manor aforesaid,
 and late in the Tenure of W.
 A. Father of the foresaid Tho-
 mas, and by him W. lately
 surrendered, by (for) a Rent
 thereof by the Tear, &c. and
 for a Heriot, &c. and for a
 Fine, &c.

Admitted and Sworn.

Ann. B. — Is admitted Tenant for Term
 of her Life to a Tenement cal-
 led, &c. within the Manor a-
 foresaid, late in the Tenure of
 J. B. Deceased, for a Fine of,
 &c.

Admitted and Sworn.

A Court-Baron only is thus :

Manor }
 of }
 A — } THE Court-Baron of T. B. Esq;
 held for the Manor aforesaid,
 (such a Day and Tear) before (such a
 one,) &c.

The

The Homage.

Edward A.
William B.
(and so 4
more.) } Sworn.

Thomas G.
William H.
(and so 4
more.) } Sworn.

i. e. 12 in all.)

Mary B. } Is admitted Tenant for the Term of
her Widowhood, to the customary
Tenement with the Appurtenances,
called, &c. late in the Tenure, &c.

John C. } In Right of Anne his Wife, is admit-
ted Tenant of a Messuage and one
Close of Pasture, &c. containing
one Acre, &c. within the Manor
aforesaid, late in the Tenure of, &c.

William D. } Is admitted Tenant as Guardian of
John D. - - an Infant, during
his Minority, of and in one Te-
nement, called, &c. containing,
&c. late in the Tenure, &c.

Admitted and Sworn.

Note; When these Proceedings are entered
at large in the Roll, and the Copies are made
out, you put Underneath,

Inrolled, and a Copy thereof made.

Of Entries of Court in the COURT-ROLL.

Entry of a Hundred Court-Leet and Court-Baron.

Hundred of A. } **T**HE Court of Law and
 and View of Frank-Pledge,
 Manor of B. } with the Court of the Manor
 of the Right Honourable Thomas Lord A. held the sixth Day of October, in the 4th Year of the Reign of the Lord George the 2d, King of Great Britain, France, &c. and in the Year of Christ 1731, before W. B. Esq; Steward there.

Bailiff. - - - George A. appeared.

Constable. - - - William B. came to execute his Office, and was Sworn to present.

A. (Tithing.) John C. Tithingman there came full with his whole Decennary, and yields (pays) to the Lord, as of certain Rent at this Day due, 7 s. 6 d. and is Sworn to present.

B. (Tithing.) Edward D. Tithingman there came full with his whole Decennary, and pays to the Lord, for certain Rent due at this Day, 6 s. 8 d. and is Sworn

to

to present, (and in like Manner enter the rest of the Tithings.)

And then the Jurors for the King and Homagers Sworn in several Columns (as before is shewn) and afterwards the Presentments of the Jurors thus :

The Jurors aforesaid upon their Oath present, That A. B. C. D. &c. are Resiants within the Jurisdiction of this View of Frank-Pledge, and owe Suit of Court thereto ; and at this Day have made Default ; therefore every of them is amerced 3 d.

The Homage aforesaid upon their Oath present, that D. E. F. G. &c. are Freeholders of this Manor (of B.) and owe Suit of Court thereto, and at this Day have made Default ; therefore every of them is amerced 12 d.

They also present, that G. H. I. &c. are customary Tenants of this Manor, and owe Suit of Court thereto, and at this Day have made Default ; therefore every of them is amerced 6 d.

The Jurors aforesaid also present, to be elected to the Office of Constable of the Hundred for the Tear following, A. B. C. D. E. F. &c. of whom C. D. was elected by the Court, and Sworn.

They also present for the Office of Tithingman of the Tithing of B. aforesaid, for the Tear ensuing T. D. and he is Sworn.

They also present for the Office of Tithingman of the Tithing of A. aforesaid, for the Tear ensuing, J. R. and he is Sworn.

(And so of the other Tithings.)

And

And then Enter the *Nuances* presented thus :

Nuances.

They also present, That the Highway leading from, &c. is in Decay. And it is commanded, (ordered,) That the said Highway be repaired by the several Persons concerned to do the same, before the 24th of June now next following, under the Penalty of 13 s. 4 d.

Also they present, That Edward D. hath obstructed a Water-course running towards the Lands of J. J. at a Place called, &c. To the Damage of the foresaid J. J. 'Tis therefore ordered, That the foresaid E. shall remove the foresaid Obstruction within 10 Days now next following, under the Penalty of 6 s. 8 d.

Also they present, that the Tenement of W. B. called, &c. is in Decay, and ought to be repaired (by him) Therefore it is ordered that the Tenement aforesaid be sufficiently repaired and amended, within 3 Months now next following, on Penalty of 20 s.

After the Entry of these and the like, proceed to the Entries of Deaths, Surrenders, and Admissions of Tenants, thus :

*Tenant's
Death.*

Also they present, that T. A. who hath held of the Lord of this Manor, for Term of his Life, by Copy of Court-Roll of the said Manor, one Tenement with the Appurtenances within the Manor aforesaid, is dead since the last Court, whence there accrues to the Lord a Heriot of 2 l. to be paid, and that J. F. is the next Tenant thereof for the Term of his Life, according to the Custom of the Manor aforesaid, who comes

comes and makes his Claim (thereof,) and prays to be admitted Tenant thereof; which is granted to him, and he is admitted, and does to the Lord his Fealty; or, who does not come to make his Claim, and therefore a Day is given to him at the next Court.

At this Court came W. B. and claims to *Admission*
hold for Term of his Life, by Copy of Court-Roll of the Manor there, bearing Date (such a Day and Year) one Messuage, and one Rod of Land, with the Appurtenances within the Manor aforesaid, late in the Tenure of E. B. his Father deceased, and prays he may be admitted Tenant thereof, which is granted to him, and he is admitted, and does, &c.

At this Court came J. C. and E. his Wife, *Surrender*
(the same E. being solely and secretly examined by the Steward there) and surrendered into the Hands of the Lord, by the Hands of the Steward, according to the Custom of the Manor aforesaid, one Messuage or Tenement called, &c. with 4 Acres of Land, Meadow and Pasture there-to belonging, with the Appurtenances within the Manor aforesaid, and all the Estate, Right, Title, Interest, Claim and Demand, both of the foresaid J. C. and E. his Wife, of and in the Messuage or Tenement and the Premises aforesaid, with the Appurtenances. By Virtue whereof all the Estate, Right, Title and Interest of the foresaid J. and E. of and in the Premises are determined; or, with that Intention that the Lord might do thereof his Will.

New Grant.

At this Court came J. D. and took of the Lord of the Manor aforesaid, by the Delivery of the Steward aforesaid, one Messuage, &c. with their Appurtenances, within the foresaid Manor, late in the Tenure of W. H. Deceased, To have and to hold the said Tenement, &c. with all and singular the Appurtenances unto the foresaid J. D. and also to J. and T. his Sons, for the Term of their Lives, and of the longer Liver of them, successively, at the Will of the Lord, according to the Custom of the Manor aforesaid, by the Rent of 3 s. 4 d. thereof per Annum; and for a Heriot when it happens, 30 s. and by all other Rents, Works, Suits, Customs and Services therefore formerly due, and of Right accustomed, and for the having such Estate and Entry into the Premises, the foresaid J. D. gives to the Lord for a Fine 90 l. beforehand paid, and so he is admitted Tenant thereof, and does his Fealty, but the Fealties of the others, are respited until, &c.

A Surrender and a new Grant.

At this Court came Mary E. who Claims to hold for the Term of her Life, and of the Lives of J. and E. her Children, by Copy of Court-Roll of the Manor there, bearing Date, &c. one Tenement called, &c. with the Appurtenances, within the Manor aforesaid; and all and singular the Estate, Title, Interest, Possession, Reversion, Claim and Demand as well of her the foresaid M. E. as of the foresaid J. and E. her Children, and every of them, (together with a Copy thereof made, now to be cancelled) she Surrenders in the foresaid Court into the Hands of the Lord, that he as Lord may

may do therewith according to his Pleasure, (or, what he will,) From whence there accrues to the Lord a Heriot, which is included in the Fine here underwritten; whereupon in this same Court came into this same Court the foresaid M. and J. her Son, and took of the Lord by the Delivery of the Steward the foresaid Premisses, with the Appurtenances: To have and to hold the Tenements aforesaid, with all and singular their Appurtenances, to the foresaid M. E. and J. E. and also to Anne E. her Daughter, for the Term of their Lives, and of the Life of the longest Liver of them successively, at the Will of the Lord, according to the Custom of the Manor aforesaid, by the Rent thereof by the Year 13 s. 4 d. and one Heriot when it shall happen, and by all other Rents, Charges, (Burthens) Works, Suits, Customs and Services, formerly due and of Right accustomed; and the foresaid M. and J. to have such Estate in, and Entry on the Premisses, give to the Lord for a Fine, &c. before-hand paid; and so the foresaid Mary E. is admitted Tenant thereof, and does her Fealty to the Lord, but the Fealties of the said J. and A. her Children are respited until, &c.

It is to be remembred, that (such a Day) at A Surrender such a Place J. E. who Claims to hold for Term out of Court of his Life, by a Copy of Court-Roll, bearing Date, &c. one Tenement called, &c. with the Appurtenances, within the Manor aforesaid, now in the Tenure of him John, came before me W. B. Gentleman, Steward of the Manor aforesaid, and the foresaid J. E. in the Presence of J. H. and T. D. 2 customary Tenants of the foresaid Manor, did Surrender the fore-

The Practising Attorney:

said Tenements with their Appurtenances, and all the Estate, Title, Interest, Possession, Claim and Demand of him J. E. therein, into the Hands of the Lord, to do therewith his Will.

**Entry of a Court-Leet and Court-Baron
of a Manor, separate.**

Manor of A --- } **T**HE Court of the View of Frank-
pledge, with the Court-Baron of,
&c. held for the Manor aforesaid, the
6th Day of April 1731, before me W. B. Stew-
ard there.

Essoins. At this Day were essoined as appears here-
after.

**Jurors in Af-
fize.** At this Day were sworn in an Assize none.
T. D. Tythingman there comes full with his
whole Decennary, and are Sworn to present.

**Election of
Tythingman.** E. E. is elected into the Office of Tythingman
there for the Tear ensuing, and has taken his
Oath for the due Execution of the Office a-
foresaid.

Jurors for the King.

William A. Thomas B. and so 4 or 5 more.	} Sworn	John J. William K. and so 4 or 5 more.	} Sworn.
---	---------	---	----------

(For above 12 may be Sworn on an
Inquiry.)

Resiants. Who being Sworn and charged upon Articles
touching the said Court, do say upon their Oath,
That A. B. &c. are Resiants within the Ju-
risdiction of this Court, and owe Suit to the
Court,

Court, and at this Day have made Default. Therefore every of them is amerced 3 d.

And they further present, That the Highway Order made, leading from, &c. to, &c. is in Decay. And it is ordered that the Highway aforesaid be repaired by the Parish (Q.) of D. aforesaid, before the 20th Day of May next, on Penalty in making Default 13 s. 6 d.

But Quere if such an Order on a Parish be good? After which enter your other Presentments, and the other Business of the Court, as before is shewn.

**Entry on the Roll of a Hundred Court-
Leet held singly.**

Hundred of Brad. --- } **T**HE Court of View of Free-pledges of the Right Honourable Thomas Lord M. &c. there held such a Day and Tear, before W. B. Esq; Steward there.

Bailiff. Henry A. --- appeared.

Constable. Abraham B. --- came and took the Office, and was Sworn to Present.

A. --- } William C. Tythingman came full (i. e. the Tything. } with his whole Decennary, and gave to the Lord the certain Rent due at this Day, 6 s. 8 d. and was Sworn to present.

B. --- } John D. Tythingman, there came (Another Tything.) } full with his whole Decennary, and gave to the Lord the certain Rent due, &c. as before.

(And so enter the Rest of the Tythings and the Names of the Tything-

The Practising Attorney:

men, noting where full, and where
Defective, &c. and then add.)

The Jurors for the Lord the King.

Andrew A.
William B.
and so 4
more. } Sworn.

John G.
David H.
and so 4
more. } Sworn.

Resiants.

Imprimis, *The Jurors aforesaid say upon their Oath, That J. A. 3d. R. B. 3d. D. E. 3d. &c. are Resiants within the Precinct of the View of the Frank-pledge aforesaid, and at this Day have made Default. Therefore every of them is amerced, as appears over their Heads.*

Constable elected.

Also they present, *That A. B. is elected at this Court by the Jurors aforesaid, into the Office of Constable for the Tear ensuing, and he is Sworn to execute the Office aforesaid.*

Tythingman elected.

Also they present, *That B. C. was elected at this Court by the Jurors aforesaid, into the Office of Tythingman there for the Tear ensuing, and he is likewise Sworn to execute the foresaid Office.*

Tythingman a Defaulter.

Also they present, *That C. D. Tythingman of the Tything of, &c. is not here at the View of Frank-Pledge, to present that which to his Office belongs, but hath made Default, and therefore he is amerced, to wit, 8d.*

Affray.

Also they present, *That E. B. made an Affray within the Jurisdiction of this Court, and drew Blood in and upon the Body of W. B. &c. and therefore he is amerced 13s. 4d.*

Also

Also they present, That G.H. is a common Tippler. Tippler, and permits Disturbances in his House contrary to the Statute, &c.

Also, That J.K. Widow, is a common Hostess, Woman of (or Harbourn) and Receiver of Whores, and evil Fame. Women of evil Fame and Conversation, to the grievous Nuisance of her Neighbours; therefore let her be amerced 20s.

Also they present, That whereas one J.K. Escape of, &c. aforesaid Teoman, was taken and arrested for Suspicion of a certain Felony, and set in the Stocks, one L.M. of, &c. aforesaid, such a Day, &c. at, &c. aforesaid, did with Force and Arms feloniously break the foresaid Stocks, and then and there permitted the foresaid J.K. to Escape thence and go at large against the Peace, &c.

Also they present, That L.M. of, &c. (such a Day,) &c. at, &c. within the Jurisdiction of this Court, with Force and Arms, &c. against the Peace of the Lord the now King, &c. The Close (House) of N.O. at, &c. he broke and entred, and one, &c. of the Goods and Chattels of him N.O. then and there found, feloniously took and carried away; Therefore it is commanded to the Bailiff to seize all the Lands and Tenements, Goods and Chattels of the foresaid N.O. that he may answer for them to the Lord of this Manor.

Entry of a Court-Baron held singly.

Manor of Acroft. } **T**HE Court-Baron of the Manor aforesaid, there held for and in the Name of the Right Honourable Thomas Lord P. (such a Day,)
 E e 4

The Practising Attorney:

Day,) &c. before me W. B. Steward there.

Effoins -- At this Day were effoined A. B. &c.

Plaints -- At this Day complained (or made their Plaints) A. B. &c.

The Homage there are,

Edward A.	} Sworn.	Thomas G.	} Sworn.
William B.		William H.	
(add 4		(add 4	
more.)		more.)	

Verdict of the
Homage.
Free-Suitors
Defaulters.

Who being Sworn and charged upon Articles touching the said Court-Baron, do say upon their Oath, That T. G. Esquire, W. E. Gentleman, J. F. Husbandman, are free Suitors of the Manor aforesaid, who owe Suit to this Court, and have made Default; Therefore every of them are in Mercy, i. e. amerced 12 d.

Tenants by
Indenture
appearing or
making De-
fault.

And they further present, That T. A. (appears) E. B. (Appears,) &c. setting the Word Appears, over the Names of those that Appear) H. C. (6 d.) J. K. (6 d.) (i. e. such as make Default) are Tenants by Indenture of the Manor aforesaid, who owe Suit to this Court; therefore every of them making Default, and not effoined, is in Mercy (amerced) as appears above the Heads (Names) of each of them.

Mercy.

Customary
Tenants.

And they further present, That J. A. (Appears) P. B. (Appears,) &c. H. E. (6 d.) R. G. (6 d.) are customary Tenants of the Manor aforesaid, who owe Suit to this Court; therefore every of them making Default, and not effoined, is in Mercy, as appears above the Heads of each of them,

Mercy.

And

And they further present, That the Tenement of Thomas G. is in Decay; and it is (thereupon) ordered, that the said T. do repair his said Tenement before the 2d Day of February next following, on Pain of 15 s. Penalties imposed, or Pains set, &c.

And they further present, That Anne C. Widow, hath not repaired the Barn and Stable belonging to her Tenement, (called, &c.) according to the Tenor of an Order made at the last Court held for the Manor aforesaid, whereby she has forfeited the Penalty of that Order to 20 s. and 'tis (now) ordered, that the foresaid A. do well and sufficiently repair the foresaid Barn and Stable before the 21st Day of March next following, on the Penalty in making Default to forfeit 5 l. Pain set.

'Tis also ordered, That J. D. do well and sufficiently repair his House before the Feast of the Annunciation, &c. next following, on the Penalty in making Default to forfeit 20 s. Pain set.

'Tis also ordered, That H. E. shall Scower and Cleanse a Water-course from a certain Place, (Field, &c.) called, &c. to (such a Place,) &c. before such a Feast (Day,) &c. on the Penalty of 13 s. 4 d. Pain set.

And the Homage aforesaid present T. W. for Incroaching on or stopping a Way, Lane, &c. (or any other Offence presentable at a Court-Baron. Presentments. (vide infra.)

Also they present T. F. &c. and J. G. &c. for the like Offence.

And they further present, That all other Things are well.

The Affeerors are { T. E. }
 { W. G. } Sworn:

Affeerors.

A

The Practising Attorney:

A Court-Baron of a Manor relating to Copyholds in Fee.

Manor } **T**HE Court-Baron of, &c. (as
of A. } before.)
Essoin -- Essoin none.

Homage (as before.) Note; there may
be above 12 Sworn.

Present-
ments.

Tenants not
appearing.

Incroachment
on the Lord's
Waste.

Digging there-
in.

Cutting Trees.

Stopping a
Lane.

First of all the said Homage present and a-
merce all customary Tenants of this Manor, who
have made Default of appearing at this Court,
to do their Suit and Service at 6 d. on each of
them severally.

Also they present, That R. W. hath incroach-
ed on the Lord's Waste at, &c. 20 Feet in
Length, and 15 Feet in Breadth; therefore he is
in Mercy 6 s 8 d. And it is ordered, that he
lay open the same before the Feast of St. John
Baptist next, on Pain of forfeiting to the Lord
for every Foot so incroached 6 d.

They also present, That J. C. hath since the
last Court digg'd and carried away the Soil (and
Gravel) of the Waste of the Lord of this Manor
in a Place abutting on the customary Lands of
the said J. &c. Therefore it is ordered, that
the said J. forfeit to the said Lord 10 s.

They also present, That since the last Court, and
before this Court T. D. one of the customary (Te-
nants,) &c. hath cut two Trees growing upon, &c.
without the License of the Lord of the said Ma-
nor; therefore he is in Mercy (i. e. amerced) 3 s.
4 d.

They also present W. E. for inclosing a certain
common Lane leading from a certain Place cal-
led,

led, &c. unto a certain Bridge called, &c. by reason whereof the Tertenants (Landholders) near adjoining to the said Lane are hindred of their Common of Pasture, and thereby in Process of Time their Passage therein may be denied and altogether (wholly) lost. Therefore ordered, that in Default of not opening the said Lane before such a Feast, &c. the said W. be amerced at 15 s.

They also present, That J. F. who held freely of the Lord of this Manor, a Messuage with the Appurtenances within the Manor aforesaid, by Fealty, Suit of Court and yearly Rent of, &c. died since the last Court seized of such an Estate therein; And that one G. F. is his Son and next Heir, and at this Court came the foresaid G. F. and paid to the Lord for a Relief 20 s. and made his Fealty.

Death of a Freeholder.

It is also at this Court presented (by the Homage,) That A. G. a customary Tenant of this Manor, since the last Court held for the said Manor, died seized of a certain customary and heriotable Tenement, lying, &c. within the same Manor, and that F. G. is his Son and next Heir. And (now) at this Court came the foresaid F. G. to take the Tenement and Appurtenances aforesaid, out of the Hands of the Lord of the Manor aforesaid.

Death of a Copyholder.

Also at this Court the Homage aforesaid presented, That J. H. a customary Tenant of this Manor since the last Court, died seized of a customary Cottage and Orchard situate within the Manor aforesaid; and because none came to be admitted thereto, the first Proclamation was made.

Proclamations on Deaths, &c.

1st Proclamation.

Also

2d Proclamation.

Also at this Court a second Proclamation was made, for T. J. to come into Court, and to be admitted to a Cottage and 16 Acres of Land thereto belonging, held of the Manor aforesaid, as Son and Heir of L. J. late deceased. And he did not come (appear.)

3d Proclamation.

Also at this Court a 3d Proclamation was made, that the next Heir of J. K. deceased, should come into Court to be admitted to a Messuage, &c. which descended to him by the Death of the said J. K. but none came (appear'd) therefore it is commanded to the Bailiff of the foresaid Manor, that he cause the Premises aforesaid to be seized into the Hands of the Lord of the Manor aforesaid.

Seizure thereon.

Death of the Tenant and Admission of the Heir in Fee.

At this Court the Homage present, that L. M. late a customary Tenant of this Manor, who held of the Lord of this Manor, to him and his Heirs at, the Will of the Lord, according to the Custom of the Manor, one customary Messuage or Tenement, with the Appurtenances, &c. since the last Court, and before this Court, died thereof seized, and that T. M. is his Son and next Heir, who being present here in Court prays himself to be admitted Tenant to the Tenement aforesaid, with the Appurtenances; to whom the Lord by the Steward grants thereof Seizin by the Rod, To have and to hold the Tenements aforesaid, with the Appurtenances, To him and his Heirs for ever, by the Rod, at the Will of the Lord, according to the Custom of the Manor aforesaid; and he gives to the Lord for a Fine, &c. and is admitted Tenant thereof, and does Fealty, &c.

Entry of a Surrender and Admission in Fee, &c.

At this Court A. B. a customary Tenant of this Manor, surrendered into the Hands of the Lord, by the Hands of the Steward aforesaid, all that

that customary Messuage or Tenement, &c. called, &c. with the Appurtenances, to the Use and Behoof of C. D. his Heirs and Assigns for ever; which said C. D. being present here in Court did humbly pray to be admitted Tenant to the Tenement aforesaid, with the Appurtenances; To whom the Lord, by the Steward aforesaid, granted and delivered to him Seizin thereof by the Rod, to have and to hold the Tenement aforesaid, with the Appurtenances, to the same C. D. his Heirs and Assigns (for ever) at the Will of the Lord, according to the Custom of, &c. (as in the Precedent above.)

At this Court it is found by the Homage a- Surrender to
foresaid, that E. F. Gentleman, a customary the Use of a
Tenant of this Manor, since the last Court, and last Will.
before, &c. hath surrendered out of Court into the
Hands of the Lord of the Manor aforesaid, by
the Hands of G. H. and J. K. two customary Te-
nants of the same Manor, in the Presence of
L. M. the Bailiff of the Lord for the Manor
aforesaid, all that his Messuage or Tenements with
the Appurtenances, held of the Manor aforesaid,
and which now are or late were called, &c.
situate and being within the Manor aforesaid;
and also all other customary Lands, Tenements and
Hereditaments whatsoever of the foresaid E. F.
and by him held of the Manor aforesaid, To the
Use and Behoof of the last will and Testament
in Writing of him E. F. and of such Person or
Persons, and his or their Heirs, to whom the
same E. F. by such last Will or Testament shall
devise the same.

At this Court the Homage present, That C. Surrender on
D. a customary Tenant of this Manor since the Condition in
last, &c. that is to say (such a Day) hath Nature of a
surrendered Mortgage.

The Practising Attorney:

surrendered into the Hands of the Lord of the Manor aforesaid, (by the Hands, &c.) according to the Custom of the said Manor, all that Messuage or Tenement, with all and singular its Appurtenances, situate, &c. within the said Manor, now in the Tenure, &c. to the Use, &c. his Heirs and Assigns for ever; Provided always, and on this Condition, that if the said C. D. his Heirs, Executors, &c. shall pay, or cause, &c. to the said E. F. his Executors, &c. the Sum of, &c. on or before (such a Day) next, &c. this Surrender to be void, &c. See old Lawyer's Office 587.

A Court of Survey of a Manor.

Manor of Bocton. } **T**HE Court Baron and Court of Survey of T. A. Esq; Lord of the Manor aforesaid, there held (such a Day) before (such a one) Steward there.

Effoins: *At this Day (Court) were effoined as appears hereafter.*

Plaints: *At this Day (Court) no Plaint.*

Homage (named as before.)

Who being Sworn and charged upon Articles touching the said Court, say upon their Oath, that, &c. (here set forth the Presentments of Defaulters, &c. as before.) And further they present for Customs of the said Manor, viz.

See the Custom-Roll post.

1. *They present, that a Court-Leet and a Court-Baron ought to be held within the Manor on Tuesday in every Easter Week, &c. yearly.*

2. *That*

2. That at this Court from Time beyond the Memory of Man, a Constable and Tythingman have been elected for that Part of the Parish of H. which lies within the said Manor, and also one Tythingman for, &c. and another for, &c.

3. That every customary Tenant of the said Manor may Cut, (Top or Lop) the Trees growing on his Tenement, without the License of the Lord.

4. That the Homage Sworn at each Court of the said Manors, on their View of any Nuisance or Incroachment among the customary Tenants, may settle the Mulct or Penalty.

5. That on a View and Presentment by the Homage, that any customary Tenant is in Decay, if the Tenant thereof shall not within such convenient Time as the said Homage shall appoint, repair the same Tenement, it shall be forfeited to the Lord.

6. That 2 customary Tenants of the said Manor, or either of them, Sworn together with the Bailiff, may off the said Manor out of Court, &c. take Surrenders of such customary Tenants as are in Extremis, (in Danger of Death, &c.) &c.

7. That all Admissions, (Surrenders, &c.) taken (or given) by the Lord of the said Manor out of Court, shall be presented by the Homage at the next Court.

8. That the Fees of the Court on Surrenders, Admissions and for Copies, &c. are as follow. (And so enter what other Customs there are in the said Manor) and then the Presentments and Grants, if you have any, are to follow; and then your Survey of the Tenants Leases and Copies, thus:

A. B.

A. B. brought a Lease dated, &c. whereby *G. A. Esq;* in Consideration of the Sum of, &c. granted to him a Messuage or Tenement, to hold for the Term of, &c. under the yearly Rent of, &c. and, &c. for an Heriot.

All the Lives are in Being.

C. D. brought a Lease, bearing Date, &c. whereby, &c. in Consideration of the Surrender of a former Lease determinable on the Deaths of, &c. And in Consideration of the Sum of, &c. demised and granted to him the said *C. D.* one Messuage and ten Acres of Land with the Appurtenances, to hold for 99 Years; if he the said *C. D. E.* his Wife, and *J.* his Son, so long live, Rent 13 s. 4 d. Heriot best Beast or Goods.

C. D. and *E.* are living, and *I. D.* is dead.

E. F. brought a Copy of Court-Roll, dated, &c. whereby, &c. granted to him a Tenement, with the Appurtenances called, &c. situate in, &c. to hold for the Life of the said *E. F.* and of *G. F.* and *T. F.* his Sons successively, Rent, &c. For the Fine of 50 l.

All the Lives are living.

G. H. brought a Copy dated, &c. granted by, &c. on the Surrender of a Life in Being of a Messuage or Tenement, &c. then in the Tenure of, &c. to hold the Reversion of the said Tenement from the Death, Surrender, or Forfeiture of, &c. unto the said *G. H.* and *I. H.* for their Lives successively,
under

under the yearly Rent of, &c. and, &c. for
a Heriot when it shall happen, Fine, &c.

G. H. only living, who is the Wife of, &c.

I. K. sent a Copy of Court-Roll dated,
&c. whereby, &c. in Consideration of the
Fine of, &c. granted one Tenement in, &c.
with the Appurtenances, to hold for the
Lives of the said *I. K.* *T. K.* and *R. K.* suc-
cessively under the Rent of, &c. and the best
Beast or Goods, or in Lieu thereof 3 *l.* 10 *s.*
for a Heriot.

All the Lives dead, except *I. K.*

L. M. produced a Copy granted by, &c.
of one Messuage, &c. to *T. M.* to hold to
the said *T. M.* and *L. M.* and *A. M.* his Sons
for their Lives successively, according to the
Custom, under the Rent of, &c. Fine, &c.

L. M. only living, the others dead.

N. O. brought a Copy, &c. ——— And
so proceed until you have surveyed all the
Leases and Copies: And at the left Hand
Corner of the Copies, and the right Hand
Corner of the Leases, at the Bottom, put
down the Time when surveyed, and your
Name, thus:

October the 6th 1723.

Surveyed by D. L. Steward there.

*Articles to be given in Charge, at a Court
of Survey.*

I *Mprimis*, you are to enquire, who have,
or are suspected to have, or keep back a-
ny of the Lord's Evidences, Court-Rolls,

F f

Rentals,

The Practising Attorney:

Rentals, Books of Survey, or other Writings whatsoever concerning this Manor, and who have been Stewards of the said Manor within the Time of your Remembrance.

2. *Item*, That you inform what Limits and Bounds belong to the said Manor, and what Lords are bounding thereupon, and whether they inroach upon the Lands of the Lord of the said Manor.

3. *Item*, That you set forth the Freehold Lands and Tenements within the said Manor, and who are Freehold Tenants, what are their Names, and the Freehold Rents they severally pay to the Lord of the said Manor, If any Alienations or Alterations have been made of any Freehold Lands within or belonging to the said Manor; and what is due to the Lord upon such Alienation or Alteration: And what Houses or Tenements of Freehold are now standing, or have been decayed within the said Manor; by whom, and when they were so decayed, what Lands do, or heretofore did belong to every such House or Tenement, and what Lands have been sold from the said Houses, and to whom.

4. *Item*, How many Copyhold or customary Tenants are within or belonging to the said Manor, and what be their several Names; and what Messuages, Lands or Tenements hath every such Copyholder or customary Tenant, what are their several Quantities and Qualities, with their yearly Values, where they do lie, and how they are abutted, and by what Rents and Services doth every such Copyholder hold the same. Whether any

of the Copyholders within the said Manor have bargained or sold any of their Copyhold Lands, and what are such Lands and Tenements so bargained and sold yearly worth, and where do they lie? Whether any Copyholder or customary Tenant hath let his Copyhold or customary Lands without the Lord's License; and whether any Persons enjoy any Copyhold Land, not having a Copy or Grant thereof from the Lord of the said Manor, and what be their Names, and the yearly Value thereof.

5. *Item*, What Tenements or Cottages are lately built within the said Manor, holden at Will, or Sufferance, or by Copy of Court-Roll; and who be the Owners or Occupiers thereof, what Rents do they yield and pay for the same, and what Lands do belong to every such Tenement or Cottage, and how long since have any such Tenements or Cottages been built, and what Commonage do they challenge to the same, and by what Right, and what is the Name of such Common or Commons they challenge Commonage in.

6. *Item*, What demesne Lands are belonging to the said Manor, and where do they severally lie; and how they are abuttalled, and what be their Quantities and Qualities, and their yearly Value; and what are the Names of them that have them in Farm, Possession, or Occupation; and for what Consideration do they severally hold the same.

7. *Item*, What Lands, Tenements, Rents, Services or Customs, within or belonging to

the said Manor are with-holden, concealed, or substracted from the Lord of the said Manor, by whom and when were they so with-holden, concealed or substracted, what are the same Lands, Tenements, &c. And the several yearly Value, &c.

8. *Item*, What Heath-Grounds, and Sheep-Folds are within or belonging to the said Manor, how are they situated and bounded, and how many Acres do they contain, and how many Sheep, &c. will the same yearly maintain and keep, and what other Privileges belong to the same, with the yearly Value. And whether any do justly claim or hold any Land that lies within the said Heath-Grounds, &c. And by what Right do they hold or claim the same; and how much are the Lands holden, where do they lie; and how abutted, &c. And what be the several Names of the Occupiers.

9. *Item*, What Commons, commonable Grounds, and waste Land are within and belonging to the said Manor, and what be their several Names; how are they situated, meered, or bounded; and how many Acres do every such Common, commonable Grounds and waste Lands contain, and who can and do justly claim or pretend to have any Common of Feed in the said commonable Grounds, and waste Lands, and what be their several Names and Claims therein.

10. *Item*, What Inclosures and Incroachments have been made at any Time heretofore, and now being, in upon or out of the said Commons, commonable Grounds and waste Lands, by whom, where, and when they

they were made, and what Quantity, &c. and by what Right, or pretended Right, they did or do hold the same.

11. *Item*, What Plantings or Trees are now and have been heretofore set or growing upon any of the Commons belonging to the said Manor, by whom they have been so set or planted, and what be the Houses or Tenements to which they belong; what Number of Plantings or Trees do the Occupiers of such Houses challenge, and by what Right; and who have lopped or felled, sold or converted to their own Use, any such Trees, and for how much or what Acknowledgment do they or any of them hold the same.

12. *Item*, What Liberties, Freedoms, Franchises, and Royalties do belong or appertain to the said Manor; and what Profits may be yearly or otherwise made or raised by the Lord thereby.

13. *And lastly*, To enquire and certify who shall neglect, or refuse to bring in and shew forth their Deeds, Evidences and Writings, for manifesting the Premises, and perfecting the Survey of the Manor aforesaid.

See the several Charges in a Court-Leet and Court-Baron, *antea*.

A Custom-Roll of a Manor.

Manor of } **T**HE Customs of the Manor of
A. in the County of, &c. set
down by the Oaths of the Tenants
of the said Manor, at a Court of
F f 3 Survey

The Practising Attorney:

Survey there holden by, &c. Lord of the said Manor, the Day and Year, &c.

Imprimis, That the Bounds of the said Manor begin at, &c. and thence lead to, &c. on the *East*; thence to, &c. on the *North*; thence to, &c. Or that the said Manor is bounded on the *North* with, &c. on the *South* with, &c. on the *East* with, &c. and on the *West* with, &c.

Item, That all manner of Royalties within the said Manor of Right belong to the Lord of the said Manor, and to none other Person or Persons whatsoever.

Item, That every Freeholder within the said Manor ought to make his Appearance at the Court there holden yearly, otherwise without lawful Excuse, to be amerced: And that every customary Tenant ought also to make his Personal Appearance at the Court-Leet and Court-Baron, as often as they and every of them shall be summoned, otherwise without lawful Excuse, to be amerced.

Item, That the Bailiff, Tithingman, Tenants and Homage within the said Manor, upon the Death, Surrender or Forfeiture of any Tenant within the same Manor, ought to view the Decay of his Tenement, and if any be, to present the same at the next Court.

Item, That every Tenant by Copy of Court-Roll may have three Lives in his Copy, viz. the Man, his Wife, and one other, or two others; and if the Husband departs this Life, the Wife named in the Copy for
Term

Term of her Life, may marry again, and hold the Tenement during her Life; but if it happen the Wife dies before her Husband, the Husband marrying again, that Wife can have but her Widowhood by the Custom.

Item, That if any be taken Tenant in any Tenement within the Lord's Court, by the Steward there appointed, in the Absence of the Lord, the Parties so taken Tenant by the said Steward, shall quietly enjoy the same during their Term specified in the Copies, according to the Custom.

Item, That any Man once taken Tenant in any Tenement by the Steward of the Court in the Presence of the Homage, by the Lord's Consent, and having a Copy, altho' by Reason of the Absence of the Lord the same be not signed, yet the Tenant having such a Copy, shall enjoy the Tenement according to the Custom of the Manor.

Item, That no Tenant within the said Manor can fell, or cut down any Oak or Ash, standing or growing upon their Tenements, at any Time to their Pleasure or Commodity, as holding of the said Manor, without License of the Steward or Bailiff, or some other Officer assign'd by the Lord of the said Manor, upon Pain of Forfeiting his or their Tenement so offending.

Item, That every Tenant within the said Manor may use the Elms standing and growing upon their Tenements, at any Time, to their Pleasure and Commodity, without any Denial, provided they bestow the same Elms upon the Reparations of their Tenements.

The Practising Attorney:

Item, That all the customary Tenants within the said Manor, ought to have upon the same sufficient and necessary Fire-Boot, &c. every Year twice, viz. at the Feasts of, &c. every such Tenant paying yearly unto the Lord of the said Manor, at the Feast of, &c. 6d. And if the Bailiff or other Officer appointed by the Lord, refuse to deliver the said Wood and Boots, then in the Presence of two honest Men the Tenants may take it themselves.

Item, That every customary Tenant and Cottager within the said Manor, may at their Will and Pleasure take, dig, and cut Turf, Heath and Furz, in and upon the Lord's Common and Waste Grounds within the Precinct of the said Manor; and for such Sufferance and License, they and every of them shall pay yearly to the Lord's Use, 6d.

Item, That all the customary Tenants within the said Manor, ought to have Common of Pasture for their Cattle and Sheep, in, &c. Common; and for such Common of Pasture they are to drive the Common yearly, and bring all such Cattle there, being from Time to Time, as often as they shall be thereunto required by the Lord of the said Manor, or his Assigns.

Item, That if any Strayers of Sheep and other Cattle, shall come and happen in the said Manor, and there remain the Space of one Year and a Day, without lawful Claim of the Owners; that then the Tenant in whose Keeping and Possession such shall be, shall pay at the Feast of, &c. the Sum of 11s. 3d. for every Sheep, and have the same; and every

every other Cattle, being in the Custody of them or any of them, to be and remain to the only Use of the Lord, if they prove Strays.

Item, That no Tenant of the said Manor can dwell from his Tenement for the Space of one Year and a Day, without the License and Consent of the Lord of the Manor, upon Pain of forfeiting his Estate.

Item, That every customary Tenant holding by Copy of Court-Roll, or otherwise, ought to pay his or her Rents due to the Lord of the Manor, within, &c. Days next after the Feasts of, &c.

Item, That no Tenant within the said Manor may or can sue another out of the Court of this Manor, if the said Court can hold Plea of the Action, without License from the Lord first had and obtained: The Pleas of this Court are, an Action of Debt not above One Pound Nineteen Shillings and Eleven Pence Three Farthings; and an Action upon the Case, or of Trespafs, in Damages not above the same Sum: And if any offend herein, to be presented and amerced.

Item, That the Bailiff or Tithingman shall yearly, within the said Manor, nominate and chuse two honest and discreet Men of the customary Tenants, to be sworn by the Steward, without Partiality, to assess all Amerciaments happening at any Court-Baron, and presented by the Homage against any Person or Persons Tenants of the said Manor.

Item, That at the Death, Surrender or Forfeiture of any Copyhold Tenant, the Bailiff and Tithingman, with the Homage and

The Pradising Attorney:

and Tenants, shall take and chuse the best Goods living of the Party so deceased, as Ox, Cow, Horse, Mare, &c. for and in the Name of an Heriot; but if there be no such living Beast, then to chuse the best dead Goods for the Lord's Use.

Item, That every Copyholder being principal Taker, having in his Copy two or three Lives, may at any Time, the Lord of the Manor consenting, exchange any one of the said Lives, or all of them; so as such Lives have not been at first chargeable with the Payment of the Fine, or any Part thereof.

Item, That the Lord of the said Manor cannot take in and inclose any Part of the Common, and demise the same to any Tenant, without Consent of the Homage,

Sworn before me the Day and

Tear above said.

W. B. Steward { A. B. }
of the Manor a- { C. D. } Jurors,
fore said. { E. F. }

(with 10 more Names subscribed.)

*A Lease of Copyhold Lands, by Virtue
of a License.*

THIS Indenture made, &c. between A. B. of, &c. of the one Part, and C. D. of, &c. of the other Part, *Witnesseth*, that the said A. B. by Virtue of a License by him obtained of and from, &c. Lord of the Manor of, &c. for the granting and letting to Farm the Messuage or Tenement hereafter in and by these Presents demised to the said C. D. *Hath* demised, granted, and to farm letten,
and

and by these Presents doth demise, &c. unto the said C. D. his Executors, &c. All that Messuage or Tenement, &c. situate, &c. To have and to hold the said Messuage or Tenement and Premisses, with the Appurtenances, unto the said C. D. his Executors, Administrators and Assigns, from the Day of the Date of these Presents, for and during the Term of, &c. Years, from thence next ensuing and fully to be compleat and ended, *Tielling and paying* therefore yearly, and every Year, during the said Term, unto the said A. B. his Heirs and Assigns, the yearly Rent or Sum of, &c. in and upon, &c. And if it shall happen the said yearly Rent to be behind and unpaid, &c. (Here a Clause of *Distress*, and the usual Covenants to pay the Rent, &c.) And the said C. D. for himself, his Executors, Administrators and Assigns, and every of them, doth covenant, promise and grant to and with the said A. B. his Heirs, Executors and Assigns, that he the said C. D. his Executors, &c. nor any of them, shall do, or wittingly or willingly permit or suffer to be done, any Act, Matter or Thing whatsoever, which may forfeit, lose, or impair the Estate or Interest of the said A. B. of in or to the said hereby demised Premisses, or of in or to any Part or Parcel thereof, or which may be otherwise prejudicial to the said A. B. his Heirs, &c. for or concerning the having, holding, or enjoying of the same, or any Part thereof; And the said A. B. for himself, his Heirs, Executors and Assigns, doth covenant and grant, to and with the said C. D. his Executors, &c. that he

he the said C. D. his Executors, &c. on Payment of the said yearly Rent and Performance of the Covenants and Agreements herein contained, which on his or their Parts and Behalvs are and ought to be performed, shall and may quietly and peaceably have, hold and enjoy all and singular the before demised Premisses, and every Part and Parcel thereof, with the Appurtenances, during the Term hereby demised, without any Interruption of him the said A. B. his Heirs, &c. or of any Person or Persons whatsoever claiming, or that may claim any Estate, Right, Title, or Interest, of in or to the same, or any Part thereof, by, from, or under him, them, or any of them; *And lastly,* the said A. B. for himself, his Heirs, &c. doth covenant and grant to and with the said C. D. his Executors, &c. that he the said A. B. his Heirs, &c. or some or one of them, shall and will from Time to Time and at all Times hereafter discharge, save harmless and keep indemnified the said C. D. his Executors, &c. of and from all Quit-Rents, Payments, Duties and Services, to be had, paid, made or done for, or out of the said hereby demised Premisses, or any Part thereof, to the said, &c. Lord of the Manor aforesaid, his Heirs and Assigns. *In Witness, &c.*

A Mortgage

*A Mortgage of Copyhold Lands, by
Virtue of a Licence.*

T HIS Indenture made, &c. between A. B. of, &c. of the one Part, and C. D. of the other Part : *Whereas* the said A. B. by Copy of Court-Roll of the Manor of, &c. bearing Date, &c. doth hold of the Right Honourable T. Lord A. for the Term of his Life, and the Lives of C. B. &c. And the Life of either of them longest living successively, at the Will of the Lord, according to the Custom of the said Manor, one Messuage or Tenement, with the Appurtenances lying within the said Manor, now in Possession of, &c. *By and under* the yearly Rent of, &c. And one Herlot when it shall happen, and by and under all other Rents, Suits and Services, therefore due and of Right accustomed ; *And whereas* by the said Copy of Court-Roll Licence is granted to the said A. B. to demise and let the said Messuage or Tenement, &c. to any Person or Persons whatsoever, for the Term of 21 Years then next following, if they the said A. B. C. B. &c. or any or either of them shall so long live, so as the said Messuage or Tenement be from Time to Time well and sufficiently repaired, and the Rents, Suits and Services therefore due to the Lord, be well and truly rendered and paid, *As by* the said Copy of Court-Roll may more fully appear. *Now this Indenture Witnesseth*, that the said A. B. by Virtue of the said Licence and Authority in and by the said

Copy

Copy of Court-Roll granted as aforesaid, and in Consideration of the Sum of, *£c.* to him in Hand paid, *£c.* *Hath* demised, granted, and to Farm letten, and by these Presents doth demise, *£c.* unto the said C. D. *All* that the said Messuage or Tenement abovementioned to be granted in and by the said Copy of Court-Roll, and every Part and Parcel thereof, with the Appurtenances, and also all Ways, *£c.* *To have and to hold* the said Messuage or Tenement and Premises hereby granted or mentioned, or intended to be granted, with the Appurtenances unto the said C. D. his Executors and Assigns from, *£c.* for and during the Term of 21 Years from thence next ensuing, and fully to be compleat and ended; if he the said A. B. C. B. *£c.* or any or either of them shall happen so long to live, *Tielling*, paying, doing and performing during the said Term, all the Rents, Heriots, Suits, Services and Customs, which shall become and grow due for the same, and which by the said A. B. C. B. *£c.* or either of them are, or should, or ought to be, from Time to Time, paid, done, rendered and performed; *Provided* always and upon Condition, that if the said A. B. his Heirs, Executors, or Administrators, do well and truly pay, or cause to be paid, unto the said C. D. his Executors, *£c.* the full Sum of, *£c.* in and upon, *£c.* without any Deduction or Abatement, for or upon Account of any Taxes, Charges or Impositions whatsoever; that then and from thenceforth, these Presents, and every Thing herein contained

contained, shall cease, determine and be void, and then and from thenceforth, it shall and may be lawful, to and for the said A. B. or such Person or Persons, to whom the Premisses shall belong, according to the Custom of the said Manor of, &c. *To have, hold and enjoy* all and singular the said Premisses abovementioned, with the Appurtenances, and receive the Rents and Profits thereof, as in his or their first and former Right and Estate, any Thing herein contained to the contrary hereof, in any Wise notwithstanding; *And* the said A. B. for himself, his Heirs, Executors and Administrators, doth covenant and graunt, to and with the said C. D. his Executors, &c. that he the said A. B. his Heirs, &c. shall and will well and truly pay, or cause to be paid, the Sum of, &c. in and upon, &c. *And also*, that he the said A. B. now is true and lawful Owner of the said Messuage or Tenement, and Premisses abovementioned, with the Appurtenances; *And that* by Virtue of the said recited Copy of Court-Roll and Licence therein granted, he the said A. B. hath good Right, full Power and lawful Authority to demise and grant the said Messuage and Tenement, &c. unto the said C. D. his Executors, &c. for and during all the said Term hereby granted, determinable as aforesaid, in Manner and Form aforesaid; *And also* that the said C. D. his Executors, &c. shall and may at all Times, after Default shall be made in Performance of the Proviso or Condition aforesaid, peaceably and quietly enter into, have, hold, occupy, possess

fess, and enjoy, all and singular the said
 Messuage or Tenement and Premises above-
 mentioned, with the Appurtenances, for and
 during the Remainder of the said Term
 hereby granted; determinable as aforesaid;
 which shall be then to come and unexpired;
 without the Let, Trouble, Hindrance, Mo-
 lestation, Interruption and Denial of him
 the said A.B. or the said C.B. &c. or ei-
 ther of them, their or either of their Ex-
 ecutors, Administrators or Assigns, and of
 all and every other Person or Persons what-
 soever. *And further*, that he the said A.B.
 his Heirs, Executors and Administrators, and
 all and every other Person or Persons, and
 his and their Heirs, Executors and Admini-
 strators, any Thing having or claiming in
 the said Premises abovementioned, or any
 Part thereof, shall and will at any Time
 or Times, after Default shall be made in Per-
 formance of the Proviso or Condition afore-
 said; make, do and execute, or cause or
 procure to be made, &c. all and every such
 further and other lawful and reasonable
 Grants, Acts and Assurances in the Law
 whatsoever, for the further, better and more
 perfect and absolute granting and assuring
 of all and singular the said Premises above-
 mentioned, with the Appurtenances, unto
 the said C.D. his Executors, &c. for and
 during all the rest and Residue of the said
 Term hereby granted, which shall be then
 to come and unexpired, absolutely freed
 and discharged of and from the Proviso or
 Condition abovementioned, and of and from
 all Benefit and Equity of Redemption of
 the

the said Premisses, by Virtue or Colour thereof, or otherwise howsoever, as by the said C. D. his, &c. or his or their Counsel learned in the Law shall be reasonably devised or advised and required. *And lastly,* it is covenanted, &c. that until Default shall be made in Performance of the Proviso or Condition aforesaid, he the said A. B. his Heirs, Executors and Administrators shall and may hold and enjoy all and singular the said Premisses abovementioned, and receive and take the Rents and Profits thereof to his and their own proper Use and Benefit, any Thing herein contained to the contrary notwithstanding. *In Witness, &c.*

A Freehold-Lease of Lands.

T*HIS Indenture made, &c. between A. B.* *Freehold Leases.*
of, &c. of the one Part, and C. D. of, &c. of the other Part, *witneseth,* That the said A. B. for and in Consideration of the Sum of, &c. to him in Hand paid by the said C. D. before the Sealing and Delivery of these Presents, the Receipt whereof the said A. B. doth hereby acknowledge, &c. *Have* demised, granted, and to Farm letten, and by these Presents doth demise, grant, &c. unto the said C. D. all that Messuage or Tenement, &c. situate, &c. with all Houses, Edifices, &c. to the said Messuage or Tenement belonging, or therewith usually used, letten or occupied, accepted and taken as Part, Parcel or Member thereof, or of any Part thereof, *To have and to hold* the said Messuage and Tenement, Lands and Premisses

misses, with all and singular the Appurtenances, unto the said C. D. his Heirs and Assigns, from the Day of the Date of these Presents, for, by and during the natural Lives of him the said C. D. and T. D. Son of, &c. and L. D. of, &c. And for and during the Life natural of every and either of them longest living, *yielding* and paying therefore yearly during the said Term, unto the said A. B. his Heirs and Assigns, the yearly Rent or Sum of, &c. at and upon the Feast-Days of the Annunciation of the Blessed Virgin *Mary*, and St. *Michael* the Archangel, by even and equal Portions; *And* if it shall happen the said yearly Rent of, &c. To be behind and unpaid in Part, or in the whole, by the Space of 28 Days next after any of the said Feasts or Days of Payment on which the same ought to be paid as aforesaid, being lawfully demanded, and no sufficient Distress or Distresses in or upon the said Premises can or may be found, whereby the same may be levied; that then and from thenceforth it shall and may be lawful to and for the said A. B. his Heirs and Assigns, into the before demised Premises, with the Appurtenances, or into any Part thereof in the Name of the whole to re-enter; and the same to have again, repossess and enjoy, as in his or their first and former Estate; and the said C. D. his Heirs and Assigns from and out of the same, from thenceforth to expel, amove and put out this Indenture, or any Thing therein contained to the contrary thereof notwithstanding. *And* the said C. D. for himself, his Heirs and Assigns,

Dr, Lawyer's Office.

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Assigns, doth covenant and grant to and with the said A. B. his Heirs and Assigns, that he the said C. D. his Heirs and Assigns, shall and will well and truly pay, or cause to be paid unto the said A. B. his Heirs or Assigns, the said yearly Rent above reserved, at the Days and Times above expressed, according to the true Intent and Meaning of these Presents; *And also* that the said C. D. his Heirs and Assigns, shall and will from Time to Time, and at all Times, during the said Term hereby granted, well and sufficiently repair, maintain, sustain, uphold, amend and keep the before demised Messuage, Tenement and Premises, and every Part and Parcel thereof, with the Appurtenances in, by and with all and all manner of needful and necessary Reparations whatsoever, when and as often as need shall require; and the same so well and sufficiently repaired, maintained, sustained, upheld and kept in the End, Expiration, or other sooner Determination of the said Term hereby granted unto the said A. B. his Heirs and Assigns, shall and will peaceably and quietly leave and yield up; *And* the said A. B. for himself, his Heirs and Assigns, doth covenant and grant to and with the said C. D. his Heirs and Assigns, that (by and under the Rent, Covenants and Agreements before in and by these Presents mentioned and contained) it shall and may be lawful to and for the said C. D. his Heirs and Assigns, from Time to Time, and at all Times during the said Term hereby granted quietly and peaceably to have, hold, use, occupy, possess

possess and enjoy the before demised Premises, and every Part and Parcel thereof, with the Appurtenances, without the lawful Let, Trouble, Interruption or Denial of the said A. B. his Heirs or Assigns, or of any other Person or Persons whatsoever lawfully claiming or to claim any Right, Title, or Interest from, by or under him, them or any of them. And the said A. B. hath made, constituted and appointed, and by these Presents doth make, constitute and appoint E. F. of, &c. and G. H. of, &c. his true and lawful Attornies jointly and severally for him and in his Name to enter into and upon all and singular the before demised Premises, or into some Part thereof in the Name of the Whole, and peaceable Possession and Seisin thereof, or of some Part thereof in the Name of the Whole to take; And after such Possession and Seisin thereof so had and taken, the like peaceable Possession and Seisin thereof, or of some Part thereof in the Name of the Whole, to deliver over unto the said C. D. or to his certain Attorney or Attornies in that Behalf to be by the said C. D. lawfully authorized, *To hold* to him, his Heirs and Assigns, according to the Purport, true Intent and Meaning of these Presents, hereby ratifying and allowing all and whatsoever his said Attornies or either of them shall do in and about the Premises by Virtue of these Presents. *In Witness, &c.*

Indorsement

Indorsement of the Livery and Seisin.

Memorandum, That on the Day, &c. full and peaceable Possession and Seisin was had and taken of the Messuage or Tenement and Premises within granted by E. F. one of the Attornies within named, and by him the said E. F. delivered over unto the within named C. D. according to the Contents of the within written Indenture, in the Presence of us,

Witnesses, }
J. K.
L. M.

E. F.

A Mortgage of a Freehold Lease.

THIS Indenture made, &c. between A. B. of, &c. of the one Part, and C. D. of, &c. of the other Part; *Whereas* the said A. B. stands seized to him and his Heirs for his own Life and the Lives of, &c. Of and in all that Messuage or Tenement, &c. with all Houses, &c. under the yearly Rent of, &c. as by the Lease thereof bearing Date, &c. made and granted by, &c. may appear. *Now this Indenture witnesseth*, That the said A. B. for and in Consideration of the Sum of, &c. The Receipt whereof, &c. *Hath* granted, bargained and sold, assigned, released, and confirmed, and by these Presents doth grant, bargain, &c. unto the said C. D. (in his actual Possession now being, by Virtue of a Bargain and Sale to him thereof made for one whole Year, by In-

denture bearing Date the Day next before the Day of the Date of these Presents, and by Force of the Statute for transferring of Uses into Possession) and to his Heirs and Assigns, all and singular the said Messuage or Tenement and Premises abovementioned, and every Part and Parcel thereof, with the Appurtenances, and the Rents, Reversions, Remainders, and Services thereof: And also all the Estate, Right, Title, Interest, Claim, and Demand whatsoever of him the said A. B. of, in, and to the said Messuage or Tenement and Premises abovementioned, and of, in and to every Part and Parcel thereof, with the Appurtenances; *To have and to hold* all and singular the said Messuage or Tenement, Lands and Premises abovementioned, and every Part and Parcel thereof, with the Appurtenances, unto the said C. D. his Heirs and Assigns, for and during the natural Lives of the said, &c. And for and during the Life of the longest Liver of them; *Provided* always and upon Condition, that if the said A. B. his Heirs or Assigns, do and shall well and truly pay or cause to be paid unto the said C. D. his Executors, Administrators or Assigns, the full Sum of, &c. in and upon, &c. next coming, without any Deduction or Defalcation for Taxes, Assessments, or any other Impositions whatsoever, either ordinary or extraordinary, That then and from thenceforth these Presents, and every Thing herein contained, shall cease and be void, any Thing herein contained to the contrary notwithstanding; *And* the said A. B. for himself, his

Heirs

Heirs and Assigns, doth covenant and grant to and with the said C. D. his Executors, Administrators and Assigns, that he the said A. B. his Heirs or Assigns, shall and will well and truly pay or cause to be paid unto the said C. D. his Executors, Administrators or Assigns, the said full Sum of, &c. in and upon, &c. next coming, without any Deduction as aforesaid, according to the true Intent and Meaning of these Presents; *And also*, that he the said C. D. his Heirs and Assigns, shall and may from Time to Time and at all Times, after Default shall be made in Performance of the Proviso or Condition herein contained, peaceably and quietly enter into, have, hold, occupy, possess and enjoy the said Messuage or Tenement and Premises abovementioned, with the Appurtenances, without the Let, Suit, Trouble, Hindrance, Molestation, Interruption and Denial of him the said A. B. his Heirs and Assigns, and of all and every other Person and Persons whatsoever; *And further*, that he the said A. B. and his Heirs, and all and every other Person and Persons, and his and their Heirs, any Thing having or claiming in the said Premises abovementioned, or any Part thereof, shall and will at any Time or Times, after Default shall be made in Performance of the said Proviso or Condition herein contained, make, do and execute, or cause or procure to be made, &c. All and every such further and other lawful and reasonable Grants, Acts, and Assurances in Law whatsoever, for the further, better, and more perfect granting and assuring of all and sin-

gular the said Premisses abovementioned, and of every Part and Parcel thereof, with the Appurtenances, unto the said C. D. his Heirs and Assigns, to the only proper Use and Behoof of the said C. D. his Heirs and Assigns, for and during all the rest and Residue of the said A. B.'s Term and Interest therein, which shall be then to come and unexpired, as by the said C. D. his Heirs or Assigns, or his or their Counsel learned in the Law shall be reasonably devised or advised and required. *And lastly*, it is covenanted and agreed upon, by and between the said Parties to these Presents, and the true Meaning hereof also is, and it is hereby so declared, that the said A. B. his Heirs and Assigns, shall and may at all Times until Default, &c. peaceably and quietly have, hold and enjoy, &c. *In Witness, &c.*

A Freehold Lease may be likewise mortgaged by *Demise*, for 99 Years, if the Lives on the Lease live so long; and then the Security will be a *Chattel*, and not *Freehold*.

A Chattel Lease for three Lives.

THIS Indenture made the ... Day of, &c. between A. B. of, &c. of the one Part, and C. D. of, &c. of the other Part, *Witnesseth*, That the said A. B. for and in Consideration of the Sum, &c. for himself, his Executors, Administrators and Assigns, *Had* demised, granted, and to Farm letten, and by these Presents doth demise, grant, &c. unto the said C. D. all that Messuage or Tenement, &c. with all Houses, Out-houses,

houses, Ways, Waters and Appurtenances, &c. (except all Timber-Trees and young Trees fit and proper to be raised and preserved for Timber-Trees now standing, growing or being, or which shall hereafter stand, grow, or be in or upon the said Premisses, or any Part thereof, with free Liberty for the said A. B. his Heirs and Assigns, to fell, cut down, take and carry away the same at all seasonable Times) *To have and to hold* the said Messuage or Tenement and Premisses above granted, and every Part and Parcel thereof, with the Appurtenances (except before excepted) unto the said C. D. his Executors, &c. from the Day of the Date of these Presents, for and during and unto the full End and Term of fourscore and nineteen Years, from thence next ensuing, and fully to be compleat and ended, if he the said C. D. A. his Wife, and B. his Son, or any or either of them shall so long happen to live, *yielding and paying* therefore yearly during the said Term, unto the said A. B. his Heirs and Assigns, the Rent of, &c. at and upon the Feasts of, &c. by even and equal Portions. *And also yielding and paying* at and upon the Death or Decease of the said C. D. the best Beast or Goods, or the Sum of, &c. for and in the Name of an Heriot; and also at and upon the Death or Decease of the said A. his Wife (she dying after the said C. D.) the best Beast or Goods, &c. for and in the Name of another Heriot; and also at and upon the Death of the said B. &c. he dying successively, the best Beast or Goods for and in the Name of another Heriot; *And*
doing

doing Suit and Service to and at all and every the Court and Courts of the said A. B. his Heirs and Assigns, to be from Time to Time, during the said Term holden in and for the said Manor of, &c. And there be ordered and justified in all Things touching the said Premises, as other the Tenants of the said Manor for their respective Estates, are, shall or ought to be; *And* if it shall happen the said yearly Rent of, &c. or Sums of Money reserv'd for Heriots, or any Part thereof, to be behind and unpaid by the Space of 21 Days next after either of the said Feasts or Days of Payment on which the same ought to be paid as aforesaid (being lawfully demanded) and no sufficient Distress or Distresses in or upon the said Premises found, whereby the same may be levied, that then and from thenceforth it shall and may be lawful to and for the said A. B. his Heirs and Assigns, into the said Messuage or Tenement and Premises hereby demised, with the Appurtenances to re-enter, and the same to have again, repossess and enjoy, as in his or their former Right and Estate, any Thing herein contained to the contrary notwithstanding; *And* the said C. D. for himself, his Executors, Administrators and Assigns, doth covenant and grant to and with the said A. B. his Heirs and Assigns, that he the said C. D. his Executors, &c. shall and will well and truly pay, or cause to be paid unto the said A. B. his Heirs or Assigns, the said yearly Rent and Heriots above reserved, at the Days and Times, and in Manner and Form above express'd, according to the true Intent

Intent and Meaning of these Presents ; *And also* that he the said C. D. his Executors, &c. at his and their own proper Costs and Charges, shall and will from Time to Time, and at all Times during the said Term hereby granted, well and sufficiently repair, maintain, sustain, uphold, amend and keep the said Messuage or Tenement and Premises hereby demised, and every Part and Parcel thereof, with the Appurtenances, in and with all Manner of needful and necessary Reparations whatsoever, when and as often as need shall require, and the same so well and sufficiently repaired, upheld and kept at the Expiration or other Determination of the said Term, peaceably and quietly leave and yield up; *And* the said A. B. for himself, his Heirs and Assigns, doth covenant and grant to and with the said C. D. his Executors, &c. that (by and under the yearly Rents, Heriots, Covenants and Agreements, before, in and by these Presents mentioned and contained) he the said C. D. his Executors, &c. shall and may peaceably and quietly have, hold, use, occupy, possess and enjoy the said Messuage or Tenement and Premises abovementioned, and every Part and Parcel thereof, with the Appurtenances (except before excepted) for and during the said Term hereby granted without any Interruption or Denial of the said A. B. his Heirs or Assigns, or of any other Person or Persons whatsoever lawfully claiming or to claim any Right, Title or Interest, from, by, or under him, them, or any or either of them. *In Witness, &c.*

There

There needs no *Acquittance* on the Back-side of these Leases for the Consideration-Money, as in other Deeds.

A Covenant in a Chattel-Lease to entertain the Steward.

AND also, That the said C. D. his Executors, &c. shall and will at his and their own proper Costs and Charges, from Time to Time, and at all Times during the said Term hereby granted, find and provide to and for the Steward and Officers of the said A. B. his Heirs and Assigns for the Time being, at such Time as they shall come to keep Court at the said Manor of, &c. sufficient and convenient Meat, Drink and Lodging, Man's Meat, and Horse Meat, so as they exceed not the Number of, &c. Persons and Horses, at any such Time, and so as they come thither not above twice in any one Year, and continue there not above two Days and two Nights at any one of those Times.

An Assignment of a Chattel-Lease.

THIS Indenture made, &c. between C. D. of, &c. of the one Part, and E. F. of, &c. of the other Part; *Whereas* in and by one Indenture of Lease bearing Date, &c. made or mentioned to be made between A. B. of, &c. of the one Part, and the said C. D. of the other Part, he the said A. B. for the Considerations therein mentioned, did demise

grant

grant and to Farm let unto the said C. D. all that Messuage or Tenement, &c. *To be had and holden* unto the said C. D. his Executors, &c. from the Day of the Date of the said Indenture, for and during the Term of 99 Years thence next ensuing, and fully to be compleat and ended, if the said C. D. &c. or any or either of them shall so long happen to live, at and under the yearly Rent of, &c. payable on, &c. as in and by the same Indenture may more fully appear. *Now this Indenture witnesseth*, That the said C. D. for and in Consideration of the Sum of, &c. to him in Hand paid by the said E. F. the Receipt whereof the said C. D. doth hereby confess and acknowledge, he the said C. D. hath granted, bargained and sold, assigned and set over, and by these Presents doth grant, &c. unto the said E. F. his Executors, &c. all that the said Messuage or Tenement and Premises above recited, and every Part and Parcel thereof, with the Appurtenances; and also all the Estate, Right, Title, Interest, Possession, Term of Years to come, Property, Claim and Demand whatsoever of him the said C. D. of, in and to the same, or of, in, or to any Part or Parcel thereof, together with the said recited Indenture of Lease; *To have and to hold* the said Messuage or Tenement and Premises above-mentioned, and hereby assigned, and every Part and Parcel thereof, with the Appurtenances, unto the said E. F. his Executors, &c. for and during all the Rest, Residue and Remainder of the said Term of
99 Years

99 Years above recited, which are yet to come and unexpired, determinable as aforesaid, in as large and ample Manner, to all Intents and Purposes, as he the said C. D. his Executors, &c. have or hath, might, should, or ought to have held and enjoyed the same, by Force and Virtue of the said recited Indenture of Lease, or by any other Ways or Means whatsoever: *And* the said C. D. for himself, his Executors, &c. doth covenant and grant to and with the said E. F. his Executors, &c. that the said recited and assigned Indenture of Lease is a good and sufficient Lease in the Law, and now is and standeth in full Force and Effect; unforfeited and unsurrendered; *And* that he the said C. D. hath not done any Act or Acts to incumber the said Premises, or any Part thereof, but now hath in himself good Right, full Power and lawful Authority to grant and assign the said Messuage or Tenement and Premises, and every Part thereof, with the Appurtenances, unto the said E. F. his Executors, &c. in Manner aforesaid: *And also*, That he the said E. F. his Executors, &c. shall and may at all Times hereafter, for and during all the Rest and Residue of the said Term of 99 Years, determinable as aforesaid, which is yet to come and unexpired, peaceably and quietly enter into, have, hold, occupy, possess and enjoy the said Messuage or Tenement and Premises hereby assign'd, and every Part and Parcel thereof, with the Appurtenances, without the Let, Trouble, Hindrance,

Hindrance, Molestation, Interruption or Denial of him the said C. D. his Executors, Administrators or Assigns, or any other Person or Persons whatsoever lawfully claiming the said Premises, or any Part thereof, by, from, or under him, them, or any of them, or by his or their Means or Procurment: *And further*, That he the said C. D. his Executors and Administrators, and all and every other Person and Persons, and his and their Executors and Administrators, any Thing having or claiming in the said Messuage or Tenement and Premises abovementioned, or any Part thereof, shall and will from Time to Time, and at all Times hereafter, upon the Request, and at the Costs and Charges in the Law of the said E. F. his Executors or Administrators, make, do and execute, or cause or procure to be made, done, &c. all and every such further and other lawful and reasonable Grants, Acts, and Assurances in the Law whatsoever, for the further, better and more perfect Granting and Assigning of the said Premises abovementioned with the Appurtenances, unto the said E. F. *To hold* to him the said E. F. his Executors, &c. for and during all the Rest and Residue of the said Term of 99 Years to come and unexpired, as by the said E. F. his Executors, Administrators or Assigns, or his or their Counsel learned in the Law, shall be reasonably devised or advised and required. *In Witness*, &c.

Note;

Note ; To this Precedent might be added a Covenant for E. F. to pay the Rent, and perform the Covenants reserved and contained in the Lease assign'd.

See the Forms of other Leases and Mortgages in Vol. II. Part III.

F I N I S.

Ex GMB

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